

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Judge James B. Jackson, Jr., Master-In-Equity
Trial Court Case No.: 2019-CP-38-00190

RECEIVED

Aug 18 2020

SC Court of Appeals

Appellate Case No. 2020-000433

Shanika Monique Void Respondent

v.

Pine Hill Apartments, L.P. and JDC Management, LLC Defendants
Of whom, Pine Hill Apartments, L.P., is the Appellant

RECORD ON APPEAL

Jordan Crapps (SC Bar No. 100580)
Gallivan White & Boyd, PA
1201 Main Street, Suite 1200
Post Office Box 7368 (29202)
Columbia, SC 29201
(803) 779-1833 (Ofc)
jcrapps@gwblawfirm.com

-and-

James M. Dedman, IV (SC Bar No. 70664)
6805 Morrison Blvd., Suite 200
Post Office Box 12250 (28220)
Charlotte, NC 29211
(704) 552-1712 (Ofc)
jdedman@gwblawfirm.com

Attorneys for Appellant

Kathleen C. Barnes (SC Bar No. 78854)
Barnes Law Firm, LLC
Post Office Box 897
Hampton, SC 29924
kbarnes@barneslawfirm.com
(803) 943-4529 (Ofc)

-and-

Charlie H. Williams, III (SC Bar No. 79897)
David R. Williams (SC Bar No. 77899)
Virginia Watson Williams (SC Bar No. 77898)
Williams & Williams
1281 Russell Street
Orangeburg, SC 29115
(803) 534-5218 (Ofc)

charlie@williamsattys.com
david@williamsattys.com
ginny@williamsattys.com
Attorneys for Respondent

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG)	CASE NO.: 2019-CP-38-00190
)	
Shanika Void,)	
)	
)	
	)	ORDER OF DEFAULT
)	
Plaintiff,)	
)	
vs.)	
)	
Pine Hill Apartments,)	
)	
Defendants)	

It appears from the Affidavit of Default of Virginia W. Williams, of the firm of Williams & Williams, attorneys for the Plaintiff, filed herein, that **Defendant Pine Hill Apartments**, has been duly served and is now in default.

Now, on motion of Virginia W. Williams, attorney for the Plaintiff, and after careful consideration of the record in this case, it is

ORDERED, ADJUDGED AND DECREED that **Defendant Pine Hill Apartments** is hereby declared to be in default.

AND IT IS SO ORDERED.

PRESIDING JUDGE, COMMON PLEAS
FIRST JUDICIAL CIRCUIT

Date: May 2, 2019
Orangeburg, SC

I SO MOVE

s/Virginia W. Williams

Virginia W. Williams



Orangeburg Common Pleas

Case Caption: Shanika Monique Void VS Pine Hill Apartments Lp

Case Number: 2019CP3800190

Type: Order/Entry of Default

So Ordered

s/ Edgar W. Dickson #2153

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STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
Shanika Void,)
)
)
Plaintiff,)
)
vs.)
)
Pine Hill Apartments,)
)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT
CASE NO.: 2019-CP- 38- 00190

**MOTION/PROPOSED ORDER
TO REFER TO MASTER**

The Complaint was filed due to an automobile accident, and it appears to the Court that it is a matter that should be referred on motion from the Plaintiff after Order of Default;

ORDERED that this matter be, and it hereby is, referred to the Master-in-Equity of Orangeburg County, for the purpose of taking such testimony and making such findings of fact and law as is necessary to dispose of the issues raised by the pleadings.

FURTHER ORDERED, that pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure and Section 14-11-85 of the Code of Laws of South Carolina, 1976, as amended, that the said master-in-Equity may enter final judgment in the case with finality and appeal directly to the Supreme Court.

Date: _____
_____, SC

Presiding Judge First Judicial Circuit

I SO MOVE

s/Virginia W. Williams
Virginia W. Williams



Orangeburg Common Pleas

Case Caption: Shanika Monique Void VS Pine Hill Apartments Lp

Case Number: 2019CP3800190

Type: Order/Referred to Master or Special Referee

So Ordered

s/ Edgar W. Dickson #2153

Electronically signed on 2019-05-24 10:36:40 page 2 of 2

STATE OF SOUTH CAROLINA) IN THE COURT OF EQUITY
)
COUNTY OF ORANGEBURG) C/A NO. 2019-CP-38-00190

Shanika Void,)
)
Plaintiffs,)
)
vs.)
)
Pine Hill Apartments,)
)
Defendant.)
_____)

ORDER

This matter came before me for a damages hearing on June 20, 2019, at the Orangeburg County Courthouse. Present for the Plaintiff was attorney Charles H. Williams, III. No one was present on behalf of Defendant. Plaintiff testified as to the incident and damages. Upon the preponderance of the evidence, the Court makes the following Findings:

I. Findings of Fact

1. Plaintiff filed this lawsuit on or about February 4, 2019, alleging negligence, recklessness, carelessness, willfulness, wantonness, and gross negligence.
2. Defendant Pine Hill Apartments was served this lawsuit by personal service, pursuant to S.C. Code Ann. Section 15-9-350, at 117 Yellow Jasmine Road, Orangeburg, SC, on February 28, 2019 by service on property manager, Brandon Wages, as more fully evidenced in affidavit of personal service filed with this court. Further, Plaintiff attempted service upon registered agent, Cheryl Finch, via certified mail to 216 Seven Farms Drive, Suite 210, Charleston, South Carolina. This address is provided on the South Carolina Secretary of State website as indicated in Exhibit A, as more fully evidenced in affidavit of non-service filed with this court. The certified mailing was returned and indicated

“Return to Sender – Attempted-Not Known – Unable to Forward”, as more fully evidenced in affidavit of non-service filed with this court.

3. Defendant has yet to answer or make an appearance in this matter.
4. An order of default was entered on or about May 7, 2019.
5. Defendant was properly notified of this hearing.
6. On or about September 2, 2016, Plaintiff was lawfully at Pine Hill Apartments located on Yellow Jasmine in Orangeburg, South Carolina, as a tenant of Defendant’s. Plaintiff walked up the stairway to visit a friend in Apartment #352 on the third floor at approximately 8:00 o’clock a.m. Upon leaving the third floor, Plaintiff slipped on the slippery steps, falling all the way down to the second floor. Plaintiff suffered with excruciating pain in her right leg, ankle, and foot. Despite the hazardous conditions, there were no caution signs marking the area or warnings indicating a hazardous condition. The steps were in a condition that created a slipping hazard. Plaintiff fell down steps from the third floor to the second floor due to said hazardous conditions. Plaintiff could not grip or hold on to the railings for support to avoid slippery steps and thus fell, causing her to fall down a flight of stairs. Plaintiff injured her right left, ankle and foot, suffering excruciating pain as a result of the fall.
7. Defendant was negligent, careless, reckless, wanton and willful in:
 - a. In permitting and allowing a wet, slippery substance to remain on the steps in the stairway;
 - b. In failing to properly place a warning device in the area so that tenants and visitors using the facilities of the apartment complex were aware of the hazard on the stairs;
 - c. In failing to properly maintain the stairs and railings of the apartments, and particularly the steps/stairway in the area of the accident, in a clean and safe

- condition for tenants and visitors using the facilities of the apartment;
- d. In failing to warn tenants and visitors, including Plaintiff, of the stairs'/stairways' hazardous condition;
- e. In allowing a substance to collect and remain on the steps;
- f. In failing to adequately supervise and oversee the apartment complex so as to prevent such a hazardous stairway condition;
- g. In failing to properly train, monitor, hire, fire, and supervise its employees;
- h. In failing to monitor the steps/stairway for hazards; and
- i. In such other and further particulars as may be presented at the trial of this matter.

All of which combined and concurred as a direct and proximate cause of the injuries and damages suffered by Plaintiff herein, said acts being in violation of the statutes and laws of the State of South Carolina.

- 8. Defendant's conduct was in violation of, but not limited to, S.C. Code Ann. §§
- 9. Defendant's negligent, reckless, grossly negligent, wanton, and willful conduct was the direct and proximate cause of Plaintiff injuries and damages, to include but not limited to:
 - a. personal injuries;
 - b. great pain and suffering, past, present and future;
 - c. medical expenses, past, present and future;
 - d. shock, embarrassment and mental distress, past, present and future;
 - e. mental anguish;
 - f. permanent physical injuries;
 - g. loss of enjoyment of life;
 - h. and all corresponding damages.

10. The allegations contained in Plaintiff's Complaint are sufficient to justify a damage award.
11. Plaintiff incurred significant medical expenses and lost wages as a result of this accident, including but not limited to:

Plaintiff Shanika Void		(50-year life expectancy)
1.	Duckett Physical Therapy	\$1,546.00
2.	Family Health Centers, Inc.	\$ 801.56
3.	TRMC	\$2,368.00
4.	Orangeburg County EMS	\$ 686.00
5.	Padgett Medical Center	\$ 620.00
6.	Gerber Temp Service (Lost Wages)	\$462.50
7.	Allied Air (Lost Wages)	<u>\$2,246.40</u>
TOTAL:		\$8,730.46

The testimony presented conclusively finds that these expenses were not only reasonable and necessary, but that they were all the result of Plaintiff's injuries suffered as a result of the slip and fall accident on September 2, 2016.

12. The medical records and testimony presented substantial evidence of pain and suffering beginning on the date of the incident to the present.
13. The medical records and testimony presented substantial evidence of the need for future medical treatment.
14. The medical records and testimony presented substantial evidence of emotional and mental anguish, anxiety, and loss of enjoyment of life from the date of the collision to the present and into the future.

15. The testimony also conclusively finds that Defendant was negligent, grossly negligent, reckless, and wanton in his conduct.

II. Conclusions of Law

1. “[B]y suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff’s allegations and to have conceded liability.’ Austin v. Specialty Transp. Servs. Inc., 358 S.C. 298, 319 (Ct. App. 2004) (quoting Roche v. Young Bros. Inc., 332 S.C. 75, 81 (1998)). Therefore, inasmuch as the Defendants in this action is in default, the factual allegations of the Complaint relating to their liability are taken as true. Additionally, it appears to this Court by a preponderance of the evidence, the Defendant’s negligence caused the injuries and damages to Plaintiff which resulted in his suffering painful injuries.
2. Finding that the essential elements of Plaintiffs’ claim have been established, the Court now addresses the amount of damages which the preponderance of the evidence shows will fairly and adequately compensate him for the injuries he suffered. The evidence reflects that because of the incident, Plaintiff indeed sustained the injuries indicated in Findings of Damages, *supra*. The Court concludes that these injuries and damages, the attendant pain and suffering, and the incurring by Plaintiff of medical expenses for treatment all resulted from the Defendant’s negligence.
3. Where a case comes before the Court for a bench trial, “[t]he trial judge has considerable discretion regarding the amount of damages, both actual and punitive.” Austin v. Specialty Transp. Servs., Inc., 358 S. C. 298, 310, 594 S.E.2d 867, 873 (Ct. App. 2004) (hereinafter “Austin”).

4. Generally, in order for damages to be recoverable, the evidence should be such as to enable the court or jury to determine the amount thereof with reasonable certainty or accuracy.... While neither the existence, causation nor amount of damages can be left to conjecture, guess or speculation, proof with mathematical certainty of the amount of loss or damage is not required. Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 43, 691 S.E.2d 794, 135, 146 (2010) (quoting Whisenant v. James Island Corp., 277 S.C. 10, 13, 281 S.E.2d 794, 796 (1981)).
5. “Actual damages are properly called compensatory damages, meaning to compensate, to make the injury party whole, to put him in the same position he was in prior to the damages received insofar as this is monetarily possible.” Austin, 358 S.C. at 311, 594 S.E.2d at 874. The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he was in before the wrongful injury occurred.” Id.
6. In determining the amount of compensation for personal injuries, it is proper to consider past and present aspects of the injuries. This would include physical and mental pain and suffering, expenses incurred for necessary medical treatment, loss of time and income which resulted from the impairment of the ability to work and earn a livelihood, the loss of enjoyment of life suffered as a result of the injury, and any other losses which are reflected by the character of the injury.
7. The injured party may recover for those future damages that are reasonably sure to result from the injuries. The principle underlying compensation for future damages is that only one action can be brought and, therefore, only one recovery had. It is proper to include in the estimate of future damages compensation for loss

of capacity for work or attention to the plaintiff's ordinary business, future medical expenses, and pain and suffering which will, with reasonable certainty, result. See Boan v. Blackwell, 343 S.C. 498, 541 S.E.2d 242 (2001). "[E]xpert testimony admitted to prove future damages need not meet the most probable standard. To be admissible, future damages do not need to be proved to a mathematical certainty. Oftentimes a verdict involving future damages must be approximated." Pearson v. Bridges, 337 S. C. 524, 529, 524 S.E.2d 108, 111 (1999).

8. Plaintiff is also entitled to damages for "loss of enjoyment of life" and "pain and suffering." See Boan, 343 S.C. at 499, 541 S.E.2d at 243 (2001). These are two separately compensable elements of damages. See id. "Pain and suffering compensates the plaintiff for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself." Id. at 501-02, 541 S.E.2d at 244.
9. Further, "[s]eparate damages are given for mental anguish where the evidence shows, for example, that the injured person suffered shock, fright, emotional upset, and/or humiliation as the result of the defendant's negligence." Boan, 343 S.C. at 502, 541 S.E.2d at 244 (citing Turner v. A B C Jalousie Co. of North Carolina, Inc., 251 S.C. 92, 160 S.E.2d 528 (1968)).
10. Damages for loss of enjoyment of life, on the other hand, "compensate for the limitations, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activities of daily life, or for the individual's inability to pursue his talents, recreational interests, hobbies, or avocations." Boan, 343 S.C. at 502, 541 S.E.2d at 244.

11. There is no definite standard by which standard to compensate the plaintiff for pain and suffering. The fact finder has the authority to determine the amount, if any, to be allowed for pain and suffering, using calm and reasonable judgment to ensure that the damages are just and reasonable in light of the testimony and evidence presented in the case. See Smalls v. South Carolina Dep't of Educ., 339 S.C. 208, 528 S.E.2d 682 (Ct. App. 2000).
12. “Gross negligence is defined as ‘the failure to exercise slight care.’” Berberich v. Jack, 392 S.C. 278, 709 S.E.2d 607 (2011)(footnote 1)(quoting Doe v. Greenville County Sch. Dist., 375 S.C. 63, 71, 651 S.E.2d 305, 309 (2007), and Steinke v. South Carolina Dep't of Labor, Licensing & Reg., 336 S.C. 373, 395, 520, S.E.2d 142, 153 (1999). “It has also been defined as ‘the intentional, conscious failure to do something which it is incumbent upon one to do or the doing of a thing intentionally that one ought not to do.’” Id. “Gross negligence ‘is a relative term, and means the absence of care that is necessary under the circumstances.’” Id.
- “‘Recklessness implies the doing of a negligent act knowingly’; it is a ‘conscious failure to exercise due care.’” Berberich v. Jack, 392 S.C., 709 S.E.2d 607 (2011)(quoting Yaun v. Baldrige, 243 S.C. 414, 419, 134, S.E.2d 248, 251 (1964) (other citations omitted). “If a person of ordinary reason and prudence would have been conscious of the probability of resulting injury, the law says the person is reckless or willful and wanton, all of which have the same meaning—the conscious failure to exercise due care.” Id.; see also Rogers v. Florence Printing Co., 233 S.C. 567, 577, 106 S.E.2d 258, 263 (1958)(“The test

by which a tort is to be characterized as reckless, wil[l]ful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights"). "The element distinguishing actionable negligence from [a] willful tort is inadvertence." Id. (citing Rogers, 233 S.C. at 578, 106 S.E.2d at 264.

“‘[T]he terms ‘willful’ and ‘wanton’ when pled in a negligence case are synonymous with ‘reckless,’ and import a greater degree of culpability than mere negligence.’” Id. (citing Marcum vs Bowden, 372 S.C. 452, 458 n. 5, 643 S.E.2d 85, 88 n.5 (2007). “‘Evidence that the defendant’s conduct breached this higher standard entitles [***12] the plaintiff to a charge on punitive damages.’” Id.

III. Award

Given Plaintiff’s uncontested medical bills of \$6,021.56 and uncontested lost wages of \$2,708.90 and the additional evidence presented at the hearing,

IT IS SO ORDERED that Plaintiff is awarded **\$250,000** in actuals for her medical expenses, expected future medical expenses, pain and suffering, future pain and suffering, loss of enjoyment of life, future loss of enjoyment of life, and punitive damages as a result of this accident.

The Honorable James B. Jackson, Jr.
First Judicial Circuit

June ____, 2019

Orangeburg, South Carolina



Orangeburg Common Pleas

Case Caption: Shanika Monique Void VS Pine Hill Apartments Lp

Case Number: 2019CP3800190

Type: Order/Damages

So Ordered

James B. Jackson, Jr. 3077 Master in Equity

Electronically signed on 2019-07-08 12:18:38 page 10 of 10

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG	)	CASE NO.: 2019-CP-38-00190
)	
Shanika Void,)	
)	
)	
)	
Plaintiff,	)	ORDER DENYING
	)	DEFENDANT PINE HILL'S
vs.	)	MOTION TO SET
	)	ORDER OF DEFAULT AND THE
Pine Hill Apartments, LP, and JDC	)	DAMAGES ORDER
Management LLC,)	
)	
)	
)	
Defendants)	

This matter came before this court on November 19, 2019. Present for Plaintiff was Virginia W. Williams. Present for Defendant Pine Hill Apartments, LP was Jordan Crapps. Based on the arguments presented at the hearing, pleadings exchanged thereto, a review of the case history, as well as substantive and procedural South Carolina law, Defendant’s motion is HEREBY DENIED.

PROCEDURAL HISTORY

Plaintiff filed her original complaint on February 4, 2019. The complaint is based on a fall at Defendant Pine Hill’s apartments on September 2, 2016. Plaintiff attempted service on Defendant Pine Hill via certified mail to its registered agent pursuant to the Secretary of State’s website. It was returned undeliverable. Plaintiff then attempted service on Defendant Pine Hill by personally serving Brandon Wages, at 117 Yellow Jasmine Road, Orangeburg, SC, which is the location of the apartment complex. He was served on February 28, 2019. No answer or appearance was made within thirty (30) days of personal service.

An order of default was entered on May 7, 2019. Defendant Pine Hill was properly notified of the damages hearing set for June 20, 2019. Defendant Pine Hill, nor anyone on its behalf, appeared at the hearing. A damages order was entered by this court on July 8, 2019. Defendant Pine Hill then filed three motions to contest this order on July 18, 2019; (1) Motion to Set Aside Order of Default and Damages Order, (2) Emergency Motion to Stay Enforcement of the Judgment, and (3) Motion to Alter or Amend the Damages Order. Pine Hill's motion to Set Aside Default and Order of damages was set before this court on November 19, 2019.

ANALYSIS

Defendant Pine Hill argued service on Brandon Wages was improper because he was not employed by Defendant Pine Hill and he was not authorized to accept service on behalf of Defendant Pine Hill. In affidavits presented to the court, Defendant Pine Hill asserted that Brandon Wages was employed as a manger by JDC Management LLC, who was responsible for managing Defendant Pine Hill's apartment complex.

In reviewing this argument, the court considered the information Defendant Pine Hill maintained with the South Carolina Secretary of State's website. Plaintiff presented to the court Defendant Pine Hill's registered agent name and address according to this website. It is indeed the agent and address that Plaintiff attempted to serve by certified restricted delivery mail, which, as indicated in Plaintiff's affidavit of default and the affidavit of nonservice, was returned undeliverable.

When Plaintiff amended her complaint to add Defendant JDC Management LLC, she served a registered agent with a similar name at a different address. Service was perfected in this manner against Defendant JDC. In the affidavits Defendant Pine Hill presented in support of its motions, it is clear the registered agent for Defendant Pine Hill is the same as that for Defendant

JDC Management. This court finds that Defendant Pine Hill failed to keep the address current of its agent for Service of Process with the Secretary of State. Had they done so, none of this would be a problem yet now Defendant Pine Hill seeks to be relieved from default which is a problem of their own creation.

The court further considered the argument that Brandon Wages was not Defendant Pine Hill's manager or even their employee. However, the affidavits presented by Defendant Pine Hill in support of its motions do not explain what Brandon Wages did with the Summons and Complaint he was served. These affidavits also fail to address the process server's Affidavit of Service which indicates Brandon Wages was the manager of this defendant.

Furthermore, per the affidavits and arguments presented by Defendant Pine Hill, the new defendant, JDC Management, LLC seems to have a very close relationship with Defendant Pine Hill. JDC manages the property owned by this Defendant and both have the same agent for Service of Process, although JDC provided the Secretary of State with a new, corrected address. Therefore, Brandon Wages could be perceived to be an agent of Defendant Pine Hill.

Finally, Defendant Pine Hill argues that Plaintiff amended her complaint to add Defendant JDC Management LLC, thus rendering the initial complaint null and void for purposes of service and the default. However, nothing in the Amended Complaint changed as to Defendant Pine Hill. Thus, in accordance with SCRCF Rule 4(d)(3) and (8), no additional service was required on Defendant Pine Hill. The Amended Complaint was filed well after default was entered. Defendant Pine Hill is not excused from answering the initial complaint because an amended complaint was filed. *See Colleton Prep v. Hoover Universal*, 2004 WL 7332779 (distinguishing *Varnes v. Glass Bottle Blowers Ass'n*, 674 F.2d 1365 (11th Cir. 1982) (granting Plaintiff's motion to strike

defendant's answer to an amended complaint on the basis that the defendant was properly served and held in default on the original complaint).

CONCLUSION

Based on the South Carolina Rules of Civil Procedure and the subsequent case law, Defendant Pine Hill's Motion to Set Aside Default and Damages order is **HEREBY DENIED**.

Orangeburg, SC

Date: _____, 2020

The Honorable James B. Jackson
First Judicial Circuit – Master in Equity



Orangeburg Common Pleas

Case Caption: Shanika Monique Void VS Pine Hill Apartments Lp

Case Number: 2019CP3800190

Type: Order/Set Aside Judgment

So Ordered

James B. Jackson, Jr. 3077 Master in Equity

Electronically signed on 2020-02-10 10:16:13 page 5 of 5

Shanika Monique Void
PLAINTIFF(S)

Pine Hill Apartments Lp et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED** (*CHECK REASON*): Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled);
 Other **Motion to Alter or Amend denied**
- ACTION STRICKEN** (*CHECK REASON*): Rule 40(j), SCRCP; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant's Motion to Alter or Amend is denied. Defendant presents no arguments not previously considered by the Court

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/04/2020 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Orangeburg Common Pleas

Case Caption: Shanika Monique Void VS Pine Hill Apartments Lp

Case Number: 2019CP3800190

Type: Order/Electronic Form 4

So Ordered

James B. Jackson, Jr. 3077 Master in Equity

Electronically signed on 2020-03-04 13:55:03 page 3 of 3

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF ORANGEBURG) C/A NO.: 2019-CP-38-_____
)

Shanika Monique Void,)
)
Plaintiff,)
)
v.)
Pine Hill Apartments, LP)
Defendants.)

**SUMMONS
(Jury Trial Demanded)**

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at 1281Russell Street (29115), Post Office Box 1084, Orangeburg, South Carolina 29116 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

s/David R. Williams
David R. Williams, 77899
Charlie H. Williams, III 79897
Virginia W. Williams, 77898
WILLIAMS & WILLIAMS
1281 Russell Street (29115)
Post Office Box 1084
Orangeburg, South Carolina 29116
Tel: 803.534.5218
Fax: 803.928.5190
Email: williamsdr@williamsattys.com
williamsvw@williamsattys.com

January 22, 2019
Orangeburg, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBUR	)	C/A NO.: 2019-CP-38-_____
)	
Shanika Monique Void,)	
)	
Plaintiff,)	
)	
v.	)	COMPLAINT
	)	(Jury Trial Demanded)
)	
Pine Hill Apartments, LP,)	
)	
Defendants.)	
_____)	

Now comes Plaintiff, complaining of Defendant herein, who would allege:

1. Plaintiff is a citizen and resident of Orangeburg County, State of South Carolina.
2. Defendant Pine Hill Apartments, LP is, and at all times hereinafter mentioned was, a corporation duly organized and existing under the laws of the state of South Carolina, and is authorized to do business as an apartment complex in the County of Orangeburg, State of South Carolina, with a location at 117 Yellow Jasmine, Orangeburg, South Carolina 29115.
3. Venue is proper in Orangeburg County, State of South Carolina.
4. On or about September 2, 2016, Plaintiff was lawfully at Pine Hill Apartments located on Yellow Jasmine in Orangeburg, South Carolina, as a tenant of Defendant's. Plaintiff walked up the stairway to visit a friend in Apartment #352 on the third floor at approximately 8:00 o'clock a.m. Upon leaving the third floor, Plaintiff slipped on the slippery steps, falling all the way down to the second floor. Plaintiff suffered with excruciating pain in her right leg, ankle, and foot.

5. Despite the hazardous conditions, there were no caution signs marking the area or warnings indicating a hazardous condition.
6. Upon information and belief, the steps were in a condition that created a slipping hazard.
7. Plaintiff fell down steps from the third floor to the second floor due to said hazardous conditions.
8. Plaintiff could not grip or hold on to the railings for support to avoid slippery steps and thus fell, causing her to fall down a flight of stairs. Plaintiff injured her right left, ankle and foot, suffering excruciating pain as a result of the fall.
9. Defendant knew or should have known there was a foreseeable condition on the steps, yet placed no warnings or cautions of said condition, nor made efforts to correct or prevent said hazardous conditions.
10. Defendant was directly responsible for and had direct control over the condition of the Pine Hill Apartments, including the outdoor stairs, so as to ensure the safety of its customers, including but not limited to Plaintiff.
11. Defendant was operating under the policies and procedures put into place by Defendant Pine Hill Apartments at the direction, or lack thereof, from said Defendant.
12. As a result of Defendant's negligence, carelessness, recklessness, willfulness, wantonness, and gross negligence, Plaintiff received serious injuries to her body, including but not limited to her back, buttocks, right leg, right upper thigh, and right foot, causing her to be under the care of a doctor, to incur medical expenses, and to experience severe pain. Plaintiff has suffered serious injuries and will in the future experience pain and suffering, and she will incur future medical bills.
13. Defendant was negligent, careless, reckless, willful, wanton, and grossly negligent, in the

following particulars:

- a. In permitting and allowing a wet, slippery substance to remain on the steps in the stairway;
- b. In failing to properly place a warning device in the area so that tenants and visitors using the facilities of the apartment complex were aware of the hazard on the stairs;
- c. In failing to properly maintain the stairs and railings of the apartments, and particularly the steps/stairway in the area of the accident, in a clean and safe condition for tenants and visitors using the facilities of the apartment;
- d. In failing to warn tenants and visitors, including Plaintiff, of the stairs'/stairways' hazardous condition;
- e. In allowing a substance to collect and remain on the steps;
- f. In failing to adequately supervise and oversee the apartment complex so as to prevent such a hazardous stairway condition;
- g. In failing to properly train, monitor, hire, fire, and supervise its employees;
- h. In failing to monitor the steps/stairway for hazards; and
- i. In such other and further particulars as may be presented at the trial of this matter.

All of which combined and concurred as a direct and proximate cause of the injuries and damages suffered by Plaintiff herein, said acts being in violation of the statutes and laws of the State of South Carolina.

14. As a result of Defendant's negligence, negligence per se, recklessness, carelessness, willfulness, wantonness, and gross negligence in the operation of their premises and

businesses, Plaintiff suffered serious, permanent and debilitating bodily injuries causing Plaintiff to be under the care of a doctor, incur medical expenses, to experience severe and excruciating pain, lose wages, and suffered serious and permanent injuries which has and will in the future cause her to endure great physical pain, suffering mental anguish, emotional distress and ultimately cause Plaintiff to incur future medical bills and wage loss.

WHEREFORE, Plaintiff prays for judgment against Defendant for actual damages and for punitive damages as may be determined by the trier of fact, the cost of this action, and for such other and further relief as this Court may deem just and proper.

s/David. R. Williams

David R. Williams, SC Bar #77899
Charlie H. Williams, III SC Bar #79897
Virginia W. Williams, SC Bar #77898
WILLIAMS & WILLIAMS
1281 Russell Street (29115)
Post Office Box 1084
Orangeburg, South Carolina 29116
Tel: 803.534.5218
Fax: 803.928.5190
Email: williamsdr@williamsattys.com
williamsvw@williamsattys.com

January 22, 2019
Orangeburg, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)
Shanika Monique Void,)
)
Plaintiff(s),)
)
vs.)
)
Pine Hill Apartments, LP)
)
Defendant(s).)
_____)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2019-CP-38-00190

AFFIDAVIT OF PERSONAL SERVICE

PERSONALLY APPEARED BEFORE ME, Jerry W. Frick, Jr., the undersigned deponent, who first being duly sworn says: That he personally served one copy of the following documents **Filed in the Office of the Clerk of Court for Orangeburg County South Carolina: Summons, Complaint**, in foregoing action upon **Defendant: Pine Hill Apartments, LP by Service on the Property Manager (Brandon Wages) on 02/28/2019 at 12:45 p.m. at his POE located at 117 Yellow Jasmine Road, Orangeburg, S.C. 29115;** That deponent is not a party to this action , is not less than eighteen **(18) years of age and has no interest therein or connection therewith.**

SWORN and subscribed to before me)
this 6th day of March, 2019)
Vickie L Frick)
)
Notary Public for South Carolina)
My Commission Expires: 01/31/2022)

Jerry W. Frick, Jr.



STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

Shanika Void,)
)
Plaintiff,)
)
vs.)
)
Pine Hill Apartments,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
Case No.: 2019-CP-38-00190

AFFIDAVIT OF NON-SERVICE

PERSONALLY, APPEARED BEFORE ME, Michelle D. Davis, who after being duly sworn doth
depose and states:

1. I am employed at Williams & Williams as a paralegal for David R. Williams/Virginia W. Williams, who represents the Plaintiff, Jonathan Washington.
2. That on February 7, 2019, I mailed a copy of the Summons, and Complaint, filed on February 4, 2019, in the above captioned matter via U.S. Postal Mail, Certified- Restricted Delivery to Cheryl Finch, Registered Agent, for Pine Hill Apartments, LP, 216 Seven Farms Drive, Suite 210, Charleston, SC 29492. Attached hereto is Exhibit A from the Secretary of State web page showing said address to be current of that of Cheryl Finch, Registered Agent, for Pine Hill Apartments, LP.
3. That on or about February 11, 2019, said mail to the Cheryl Finch, Registered Agent, for Pine Hill Apartments, LP, was returned by the U.S. Postal Service as Return to Sender, Attempted-Not Known, Unable to Forward.

Michelle D. Davis

Sworn to before me this 3rd
day of April, 2019

Notary Public for South Carolina

My Commission Expires 04/02/22

Attach this card to the front of the envelope or on the front if space permits.
1. Article Addressed to:

A. Recd
B. Recel
C. Is del
D. Is del
IF YR

CHERYL FINCH as RA for
Pine Hill Apartments, LP
216 Seven Farms Drive, Suite 210
Charleston, SC 29492

8

9590 9402 4053 8079 7309 18

7018 1830 0001 3528 7794

PS Form 3811, July 2015 PSN 7530-02-000-9053

WILLIAMS & WILLIAMS

ATTORNEYS AT LAW
P.O. BOX 1084
ORANGEBURG, S.C. 29116-1084

CERTIFIED MAIL



7018 1830 0001 3528 7794

COLUMBIA
SC 290
07 FEB '19
PM 4 L

MIKE

Master
02/06/2019
\$012.102
ZIP 29115

RETURN TO SENDER
ATTEMPTED - NOT KNOWN
UNABLE TO FORWARD

BC: 29116108484 *1980-01575-11-20

FEB 2 19 19

CHERYL FINCH as RA for
Pine Hill Apartments, LP
216 Seven Farms Drive, Suite 210
Charleston, SC 29492

ANK

291161084
29492 937260

Business Entities Online

Exhibit "A"

File, Search, and Retrieve Documents Electronically

PINE HILL APARTMENTS, LP

Corporate Information

Entity Type: Limited Partnership

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 02/15/2006

Expiration Date: N/A

Term End Date: 12/31/2056

Dissolved Date: N/A

Registered Agent

Agent: CHERYL FINCH

Address: 216 SEVEN FARMS DR STE 210
CHARLESTON, South Carolina 29492

Official Documents On File

Filing Type	Filing Date
Amendment	12/19/2007
LP Certificate	02/15/2006

For filing questions please contact us at 803-734-2158

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ELECTRONICALLY FILED - 2019 Apr 03 12:40 PM - ORANGEBURG - COMMON PLEAS - CASE#2019CPCB3800190

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG	)	CASE NO.: 2019-CP-38-00190
)	
Shanika Void,)	
	)	AFFIDAVIT OF DEFAULT
)	
Plaintiff,)	
)	
vs.)	
)	
Pine Hill Apartments,)	
)	
)	
)	
Defendants.)	

PERSONALLY, APPEARED before me Virginia W. Williams who, being duly sworn, deposes and states:

I am the attorney for Plaintiff in the above-captioned action. The Summons, and Complaint were served upon property manager, Brandon Wages for Defendant Pine Hill Apartments on February 28, 2019, as indicated in the Affidavit of Service filed on March 11, 2019.

Further, on February 7, 2019, Plaintiff attempted service via certified mail upon Registered Agent Cheryl Finch at the address provided on the Secretary of State website. On February 11, 2019, the Plaintiff received the certified mailing back in the mail marked "Return to Sender/Unable to Forward". An affidavit of non-service was filed on April 3, 2019.

More than thirty (30) days have elapsed since the date of such service on property manager Brandon Wages for Defendant Pine Hill Apartments and Defendant has not filed an answer or notice of appearance herein and, therefore, is in default. Deponent is familiar with the Soldiers and Sailors Relief Act, 50 U.S.C. Appx. §520, Civil Relief Act of 1940, and represents to the Court that upon information and belief, Defendant Pine Hill Apartments or registered agent Cheryl Finch is not in the military service of the United States of America, nor is she entitled to the protection of the Civil Relief Act of 1940 and amendments thereto.

Virginia W. Williams

SWORN to before me this 30th
day of April, A.D., 2019.

Jayce B. Feagles (SEAL)
Notary Public for South Carolina
My Commission expires 4/02/22
Orangeburg, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

Shanika Void,)
)
Plaintiff,)
)
vs.)
)
Pine Hill Apartments, LP,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C/A NO. 2019-CP-38-00190

**PINE HILL APARTMENTS, LP'S
EMERGENCY MOTION TO STAY
ENFORCEMENT OF JUDGMENT**

**TO: DAVID R. WILLIAMS, ESQ. AND VIRGINIA W. WILLIAMS, ESQ.,
ATTORNEYS FOR PLAINTIFF:**

YOU WILL PLEASE TAKE NOTICE that ten days after the service of this notice upon you or as soon thereafter as counsel may be heard, the undersigned attorneys for Defendant Pine Hill Apartments, LP (“Defendant”) will move before the presiding judge of the Orangeburg County Court of Common Pleas for an Order pursuant to Rule 62 of the South Carolina Rule of Civil Procedure for an Order saying the execution of or any proceeding to enforce the judgment evidenced by the Order of Damages dated July 8, 2019. Rule 62 provides:

In its discretion and on such conditions for the security of the adverse party as are proper, the court may stay the execution of or any proceedings to enforce a judgment pending the disposition of a motion for a new trial or to alter or amend a judgment made pursuant to Rule 59, or of a motion for relief from a judgment or order made pursuant to Rule 60, or of a motion for judgment in accordance with a motion for directed verdict made pursuant to Rule 50, or of a motion for amendment to the findings or for additional findings made pursuant to Rule 52(b).

Defendant in this matter has filed Motions pursuant to Rules 59 and 60 and seeking to set aside the Default Judgment entered in this matter. Defendant has meritorious and important arguments regarding, among other things, the lack of personal jurisdiction and lack of service of process in

this matter which undermine the default in this case. A stay of execution of the default judgment is necessary to permit those meritorious arguments to be heard and resolved. Plaintiff will not be prejudiced by such a stay.

Defendant specifically reserves the right to add additional grounds and supplement this motion in the future. This motion is based upon the pleadings, any memorandum submitted in support of the same, affidavits filed or to be filed, the Orders previously entered and filed with the Clerk of Court, applicable case and statutory law, and any such matters as the Court may deem just and proper. Counsel for Defendant certifies that he tried to consult with Plaintiff's counsel on several occasions prior to filing this motion but such consultation could not be timely held.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

s/ Jordan M. Crapps
Jordan Crapps (SC Bar No. 100580)
1201 Main Street, Suite 1200
Post Office Box 7368 (29202)
Columbia, SC 29201
(803) 779-1833 (Ofc)
(803) 779-1767 (Fax)
jcrapps@gwblawfirm.com

James M. Dedman, IV (SC Bar No. 70664)
6805 Morrison Blvd., Suite 200
Post Office Box 12250 (28220)
Charlotte, NC 29211
(704) 552-1712 (Ofc)
(704) 362-4850 (Fax)
jdedman@gwblawfirm.com

Attorneys for Pine Hill Apartments, LP

July 18, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

Shanika Void,)
)
Plaintiff,)
)
vs.)
)
Pine Hill Apartments, LP,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

C/A NO. 2019-CP-38-00190

**PINE HILL APARTMENTS, LP'S
MOTION TO ALTER OR AMEND**

**TO: DAVID R. WILLIAMS, ESQ. AND VIRGINIA W. WILLIAMS, ESQ.,
ATTORNEYS FOR PLAINTIFF:**

YOU WILL PLEASE TAKE NOTICE that ten days after the service of this notice upon you or as soon thereafter as counsel may be heard, the undersigned attorneys for Defendant Pine Hill Apartments, LP (“Defendant”) will move before the presiding judge of the Orangeburg County Court of Common Pleas for an Order pursuant to the South Carolina Rules of Civil Procedure 52(b) and 59(e) to alter or amend the Order of Damages filed July 8, 2019, and to relieve Defendant from actual and punitive damages adjudged and decreed therein.¹

This Motion is supported by the following grounds:

1. The Court erred in finding that the Defendant had been properly served pursuant to S.C. Code Ann. Section 15-9-350 – the non-resident motorist statute. In fact, service was not effectuated because the individual who was served was not an officer, a managing or general agent, or an agent authorized by appointment or by law to receive service of process for Defendant. Further, service by certified mail cannot be the basis for the entry

¹ Defendant has also filed a Motion to Set Aside Order of Default and Order of Damages pursuant to Rules 4(d)(3), 12(b)(2), (5) and (6), 55 and 60(b) of the South Carolina Rules of Civil Procedure.

of default when, as here, the return receipt is not executed or otherwise accepted by the defendant.

2. The Court erred in finding that it had personal jurisdiction over Defendant, when in fact, personal jurisdiction is lacking due to a failure of service of process.
3. The Court erred in finding that Defendant was properly notified of the damages hearing. In fact, Plaintiff mailed the notice to an address which it knew, through the attempted service of process above, was not associated with Defendant.
4. The Court erred in finding the Defendant liable for Plaintiff's alleged damages without any allegation or finding that Defendant knew or should have known about or otherwise created the alleged dangerous condition.
5. The Court erred in finding that the allegations contained in Plaintiff's Complaint are sufficient to justify a damage award when in fact it failed to allege that Defendant knew or should have known about or otherwise created the dangerous condition.
6. The Court erred in finding that Plaintiff presented sufficient evidence to support future loss of enjoyment of life, future damages and permanent injury.
7. The Court erred in finding that expert testimony established future medical damages.
8. The Court erred in finding Defendant was negligent, reckless, grossly negligent, wanton, or willful.
9. The Court erred in awarding punitive damages in any respect, let alone an amount that does not bear a reasonable relationship to the alleged harm caused by Defendant. The Court further erred in combining actual and punitive damages.
10. The Court erred in awarding punitive damages in violation of Defendant's constitutional rights.

11. The Court erred in providing an award in an amount patently and greatly out of proportion to the wrongs alleged in the Complaint.

WHEREFORE, Defendant respectfully requests that this Court enter an order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure altering or amending the judgment as detailed above.

Defendant specifically reserves the right to add additional grounds and supplement this motion in the future. This motion is based upon the pleadings, any memorandum submitted in support of the same, affidavits filed or to be filed, the Orders previously entered and filed with the Clerk of Court, applicable case and statutory law, and any such matters as the Court may deem just and proper. Counsel for Defendant certifies that he tried to consult with Plaintiff's counsel on several occasions prior to filing this motion but such consultation could not be timely held and consultation with Plaintiffs counsel would likely serve no useful purpose.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

s/ Jordan M. Crapps
Jordan Crapps (SC Bar No. 100580)
1201 Main Street, Suite 1200
Post Office Box 7368 (29202)
Columbia, SC 29201
(803) 779-1833 (Ofc)
(803) 779-1767 (Fax)
jcrapps@gwblawfirm.com

James M. Dedman, IV (SC Bar No. 70664)
6805 Morrison Blvd., Suite 200
Post Office Box 12250 (28220)
Charlotte, NC 29211
(704) 552-1712 (Ofc)
(704) 362-4850 (Fax)
jdedman@gwblawfirm.com

Attorneys for Pine Hill Apartments, LP

July 18, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG	)	C/A NO. 2019-CP-38-00190
)	
Shanika Void,)	
)	
Plaintiff,)	
)	
vs.	)	PINE HILL APARTMENTS, LP'S
	)	MOTIONS TO SET ASIDE ORDER OF
Pine Hill Apartments, LP,	)	DEFAULT AND TO BE RELIEVED FROM
	)	ORDER OF DAMAGES
)	
Defendant.)	
)	

TO: DAVID R. WILLIAMS, ESQ. AND VIRGINIA W. WILLIAMS, ESQ., ATTORNEYS FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that ten days after the service of this notice upon you or as soon thereafter as counsel may be heard, the undersigned attorneys for Defendant Pine Hill Apartments, LP (“Defendant”) will first move before the presiding judge of the Orangeburg County Court of Common Pleas for an Order setting aside an Order of Default filed May 7, 2019, and subsequently move for an Order relieving them from an Order of Damages filed July 8, 2019 due to improper service, lack of personal jurisdiction and on the grounds that Plaintiff’s Complaint fails to state facts sufficient to constitute a cause of action. These Motions are also based on the grounds that Defendant can demonstrate good cause for such relief, that such relief is timely requested, and that Defendant has meritorious defenses, and that Plaintiff will not be prejudiced. Defendant can also establish that it should be relieved from the judgment by reason of mistake, inadvertence, surprise or excusable neglect and that the judgment is void. These motions are made pursuant to Rules 4(d)(3), 12(b)(2), (5) and (6), 55 and 60(b) of the South Carolina Rules of Civil Procedure and on the following grounds:

1. This matter arises out of Plaintiff's alleged September 2, 2016, slip and fall occurring on stairs at the Pine Hill Apartments located at 117 Yellow Jasmine, Orangeburg, South Carolina 29115.
2. Plaintiff filed her Complaint on February 4, 2019, alleging causes of action sounding in negligence.
3. According to affidavits filed with this Court by Plaintiff, Plaintiff attempted service by:
 - a. Mailing "a copy of the Summons and Complaint via U.S. Postal Mail, Certified-Restricted Delivery to Cheryl Finch, Registered Agent, for Pine Hill Apartments, LP, 216 Seven Farms Drive, Suite 210, Charleston, SC 29492." The Summons and Complaint "was returned by the U.S. Postal Service as Return to Sender, Attempted-Not Known Unable to Forward" and
 - b. Personally serving the Summons and Complaint on "Pine Hill Apartments, LP by Service on the Property Manager (Brandon Wages) on 02/28/2019 at 12:45 p.m. at his POE located at 117 Yellow Jasmine Road, Orangeburg, S.C. 29115."
4. Defendant owns the apartment complex known as the Pine Hill Apartments while the Apartments are managed by the property management service JDC Management, Inc. ("JDC") pursuant to a Management Agreement. (See, Affidavit of Cheryl Ferraro attached hereto as **Exhibit A**).
5. JDC is not authorized to accept service of process on behalf of the Pine Hill Apartments, LP. (See Affidavit of Cheryl Ferraro attached hereto as **Exhibit A**).
6. Brandon Wages, the recipient of the attempted personal service according to the Affidavit of Personal Service, is an employee of JDC as a maintenance technician and has never

been employed by Defendant and is not a “property manager”. (Affidavit of Brandon Wages, attached hereto as **Exhibit B**).

7. Brandon Wages does not have the authority to accept service on behalf of Defendant. (See, Affidavits of Cheryl Ferraro and Brandon Wages, attached hereto as **Exhibits A and B**).
8. According to the affidavit of service filed in connection with the Notice of Damages Hearing, the notice of hearing was sent by Plaintiffs to the same address which was previously returned as undeliverable.
9. This attempted notice is deficient as Plaintiff was clearly put on notice and aware that this address was not Defendant’s last known address as required by Rules 55(b)(3) and (5)(a), SCRPC.
10. Defendant did not have any notice of the Damages Hearing.
11. Defendant requests the Court first to set aside the Order of Default and then relieve them from the Order of Damages pursuant to Rules 4(d)(3), 12(b)(2), (5), and (6), 55(c) and 60(b) for the following reasons:
 - a. Service of the Summons and Complaint on Defendant was improper and cannot support entry of default or default judgment in, but not limited to, the following particulars:
 - i. Service via certified mail, return receipt requested cannot be the basis for the entry of a default or a judgment by default unless the return receipt indicates acceptance by the Defendant. (Rule 4(d)(8), SCRPC). Plaintiff’s certified mail return receipt was not executed by anyone, let alone the

Defendant. (See, Affidavits of Cheryl Ferraro and Brandon Wages, attached hereto as **Exhibits A and B**); and

- ii. Rule 4(d)(3) requires service on partnerships “by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process...” Plaintiffs delivery of the Summons and Complaint to Brandon Wages is ineffectual and insufficient because he is not an officer, a managing or general agent, or an agent authorized by appointment or law to receive service of process for Defendant. (See, Affidavits of Cheryl Ferraro and Brandon Wages, attached hereto as **Exhibits A and B**).
- b. This Court does not have personal jurisdiction over Defendant because it was not properly served;
- c. The relief requested is for good cause shown as a result of mistake, inadvertence, surprise, or excusable neglect (See, Affidavits of Cheryl Ferraro and Brandon Wages, attached hereto as **Exhibits A and B**).
- d. Defendant should be relieved from the Order of Judgment because of mistake, inadvertence, surprise or excusable neglect and because the judgment is void.
- e. The relief is timely requested;
- f. Defendant has meritorious defenses;
- g. Plaintiff will not be prejudiced by the requested relief; and
- h. Plaintiff has failed to allege facts sufficient to establish liability against them in, but not limited to, the fact that the Complaint fails to allege that Defendant had actual or constructive knowledge of the alleged defective or dangerous condition

which led to Plaintiff's injury but rather merely and insufficiently pleads that "Defendant knew or should have known there was a **foreseeable condition** on the steps..." (See, Complaint, ¶ 9 (emphasis added)).

THEREFORE, Defendant respectfully requests an Order of this Court:

- a. Finding that service of process on Defendant was insufficient;
- b. Finding that the Court lacks personal jurisdiction due to improper service;
- c. Finding that the entry of judgment and judgment in this case is void or otherwise setting aside both the entry of default and default judgment;
- d. Finding that the notice of damages hearing was insufficient;
- e. Relieving Defendant from the Order of Damages filed on July 8, 2019; and
- f. Expanding time to answer or otherwise respond to the Complaint until 30 days following the entry of such order.

Defendant specifically reserves the right to add additional grounds and supplement this motion in the future. This motion will be supported by a memorandum to be submitted in the future, affidavits, applicable case and statutory law, and any such matters as the Court may deem just and proper. Counsel for Defendant certifies that he tried to consult with Plaintiff's counsel on several occasions prior to filing this motion but such consultation could not be timely held and consultation with Plaintiffs counsel would likely serve no useful purpose.

{Signature page to follow}

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

s/ Jordan M. Crapps

Jordan Crapps (SC Bar No. 100580)

1201 Main Street, Suite 1200

Post Office Box 7368 (29202)

Columbia, SC 29201

(803) 779-1833 (Ofc)

(803) 779-1767 (Fax)

jcrapps@gwblawfirm.com

James M. Dedman, IV (SC Bar No. 70664)

6805 Morrison Blvd., Suite 200

Post Office Box 12250 (28220)

Charlotte, NC 29211

(704) 552-1712 (Ofc)

(704) 362-4850 (Fax)

jdedman@gwblawfirm.com

Attorneys for Pine Hill Apartments, LP

July 18, 2019

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG	)	C/A NO. 2019-CP-38-00190
)	
Shanika Void,)	
)	
Plaintiff,)	
	)	AFFIDAVIT OF CHERYL FERRARO
vs.)	
)	
Pine Hill Apartments, LP,)	
)	
Defendant.)	
_____)	

Personally appeared before me, Cheryl Ferraro, who after being duly sworn, deposes and says as follows:

1. I am over the age of eighteen (18) and have personal knowledge of the following facts.
2. I am competent to testify to the facts stated in this Affidavit.
3. I am and have been since the creation of Pine Hill Apartments, LP Vice President of The Humanities Foundation, Inc. and Humanities Housing, Inc. which are the sole members of HF Pine Hill, LLC and HH Pine Hill, LLC respectively.
4. HF Pine Hill, LLC and HH Pine Hill, LLC are the two General Partners of Pine Hill Apartments, LP.
5. There is no record of Pine Hill Apartments, LP, HF Pine Hill, HH Pine Hill, The Humanities Foundation, or Humanities Housing ever receiving the Summons and Complaint at issue.
6. I was previously known as Cheryl Finch and am the registered agent for service of process for Pine Hill Apartments, LP. I was never served the Summons and Complaint at issue.

7. On July 11, 2019 The Humanities Foundation received the Order signed by the Honorable Judge James B. Jackson and filed with the Orangeburg County Court of Common Pleas on July 8, 2019.
8. Brandon Wages is not an employee, property manager, officer, managing or general agent, or an agent authorized or appointed by law to receive service of process for Pine Hill Apartments, LP.
9. Likewise, Brandon Wages is not an employee, property manager, officer, managing or general agent, or an agent authorized or appointed by law to receive service of process for HF Pine Hill, HH Pine Hill, The Humanities Foundation, or Humanities Housing.
10. Upon information and belief, Brandon Wages is a maintenance technician for JDC Management, LLC.
11. JDC Management, LLC manages the property and apartment complex owned by Pine Hill Apartments, LP pursuant to a Management Agreement.
12. JDC Management, LLC is not authorized or appointed by law to receive service of process for Pine Hill Apartments, LP.
13. In fact, the Management Agreement between Pine Hill Apartments, LP and JDC Management, LLC specifically dictates that JDC Management “is not authorized to accept service of process on behalf of [Pine Hill Apartments, LP].”
14. There is no record of Pine Hill Apartments, LP, HF Pine Hill, HH Pine Hill, The Humanities Foundation, or Humanities Housing ever receiving the Notice of Damages Hearing.
15. In fact, following a letter from opposing counsel dated November 10, 2016 (nearly fifteen months prior to the filing of the Complaint in this matter) there is no record of Pine Hill

Apartments, LP, HF Pine Hill, HH Pine Hill, The Humanities Foundation, or Humanities Housing having received any information or documents related to this matter.

16. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER THE AFFIANT SAYETH NOT.

Executed this 17th day of July, 2019.

Cheryl Ferraro
Cheryl Ferraro

SUBSCRIBED AND SWORN BEFORE

Me this 17th day of July, 2019

Julie Ann Davis

Notary Public

My Commission Expires: 1/31/2024



EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG	)	C/A NO. 2019-CP-38-00190
)	
Shanika Void,)	
)	
Plaintiff,)	
	)	AFFIDAVIT OF BRANDON WAGES
vs.)	
)	
Pine Hill Apartments, LP,)	
)	
Defendant.)	
)	

Personally appeared before me, Brandon Wages, who after being duly sworn, deposes and says as follows:

1. I am over the age of eighteen (18) and have personal knowledge of the following facts.
2. I am competent to testify to the facts stated in this Affidavit.
3. I am and was on February 28, 2019, employed by JDC Management, LLC as a maintenance technician.
4. I am not and never have been a property manager of or for the Pine Hill Apartments or Pine Hill Apartments, LP, HF Pine Hill, LLC, HH Pine Hill, LLC, The Humanities Foundation, Inc., or Humanities Housing, Inc.
5. I have never been employed by or an officer, managing or general agent of Pine Hill Apartments, LP, HF Pine Hill, LLC, HH Pine Hill, LLC, The Humanities Foundation, Inc., or Humanities Housing, Inc.
6. I have never been authorized to accept service of process on behalf of Pine Hill Apartments, LP, HF Pine Hill, LLC, HH Pine Hill, LLC, The Humanities Foundation, Inc., or Humanities Housing, Inc.

7. In fact, to the best of my knowledge, I am not authorized to accept service of process on behalf of my own employer, JDC Management, LLC.

8. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER THE AFFIANT SAYETH NOT.

Executed this 18 day of July, 2019.

Brandon A Weger
Brandon Wages

SUBSCRIBED AND SWORN BEFORE

Me this 18th day of July, 2019

Julie Ann Davis
Notary Public

My Commission Expires: 1/31/2024



STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

Shanika Void,)
)
Plaintiff,)
)
vs.)
)
Pine Hill Apartments, LP,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
C/A NO. 2019-CP-38-00190

**STIPULATION OF PLAINTIFF
TO STAY ENFORCEMENT OF
JUDGMENT**

WHEREAS, Plaintiff Shanika Void (“Plaintiff”) filed her Complaint against Defendant Pine Hill Apartments, LP (“Defendant”) initiating the above captioned matter on February 4, 2019;

WHEREAS, default was entered on May 7, 2019, and a Default Judgment Order was entered on July 8, 2019 awarding Plaintiff \$250,000 (the “Order”);

WHEREAS, on July 18, 2019, Defendant filed Motions (1) to Alter or Amend the Order, (2) to Set Aside the Order of Default and to be relieved from the Order, and (3) to Stay Enforcement of the Judgment (collectively referred to hereafter as the “Motions”); and

WHEREAS, the Plaintiff and Defendant wish to resolve the Motion to Stay Enforcement of the Judgment by and through the entry of this Stipulation without otherwise disturbing the current status of the entry of default, the Order, or the judgment rolls or the Parties’ positions in opposition or support thereof.

NOW THEREFORE, it is hereby stipulated that:

1. Plaintiff will not seek to enforce the judgment or the Order against Defendant until at least ten days following the resolution of the Motions and then only as permitted under the South Carolina Rules of Civil Procedure, statutory law, and common law;

2. Defendant's Motion to Stay Enforcement of the Judgment is hereby resolved;
3. Other than staying Plaintiff's ability to enforce the judgment and Order, this stipulation does not otherwise affect, modify or alter the judgment or Order;
4. This stipulation does not resolve Defendant's Motions to Alter or Amend the Order or to Set Aside the Order of Default and to be relieved from the Order;
5. Plaintiff reserves any and all arguments in support of the entry of default, the judgment, and the Order and nothing in this Stipulation shall be interpreted to limit Plaintiff's positions and arguments in opposition to the remaining Motions; and
6. Defendant reserves any and all arguments in opposition to the entry of default, the judgment and the Order and nothing in this stipulation shall be interpreted to limit Defendant's positions and arguments in support of the remaining Motions.

IT IS SO STIPULATED.

WE SO CONSENT:

s/ David R. Williams
David R. Williams (77899)
Charlie H. Williams (79897)
Virginia W. Williams (77898)
Williams & Williams
Post Office Box 1084
Orangeburg, SC 29116
williamsdr@williamsattys.com
williamsvw@williamsattys.com
(803) 534-5218

Attorneys for Plaintiff

WE SO CONSENT:

s/ Jordan M. Crapps
Jordan M. Crapps (100580)
Gallivan, White & Boyd, P.A.
PO Box 7368
Columbia, SC 29202
jcrapps@gwblawfirm.com
(803) 779-1833

Attorney for Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG	)	C/A NO.: 2019-CP-38-_____
)	
Shanika Monique Void,)	
)	
Plaintiff,)	
	)	AMENDED SUMMONS
v.	)	(Jury Trial Demanded)
Pine Hill Apartments, LP, and JDC)	
Management LLC,)	
Defendants.)	

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at 1281 Russell Street (29115), Post Office Box 1084, Orangeburg, South Carolina 29116 within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, Plaintiff in this action will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint.

s/David R. Williams
David R. Williams, 77899
Charlie H. Williams, III 79897
Virginia W. Williams, 77898
WILLIAMS & WILLIAMS
1281 Russell Street (29115)
Post Office Box 1084
Orangeburg, South Carolina 29116
Tel: 803.534.5218
Fax: 803.928.5190
Email: williamsdr@williamsattys.com
williamsvw@williamsattys.com

August 19, 2019
Orangeburg, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBUR	)	C/A NO.: 2019-CP-38-_____
)	
Shanika Monique Void,)	
)	
Plaintiff,)	
	)	AMENDED COMPLAINT
v.	)	(Jury Trial Demanded)
)	
Pine Hill Apartments, LP, and JDC)	
Management LLC,)	
Defendants.)	
_____)	

Now comes Plaintiff, complaining of Defendant herein, who would allege:

1. Plaintiff is a citizen and resident of Orangeburg County, State of South Carolina.
2. Defendant Pine Hill Apartments, LP is, and at all times hereinafter mentioned was, a corporation duly organized and existing under the laws of the state of South Carolina, and is authorized to do business as an apartment complex in the County of Orangeburg, State of South Carolina, with a location at 117 Yellow Jasmine, Orangeburg, South Carolina 29115.
3. Defendant JDC Management LLC is, and at all times hereinafter mentioned was, a corporation duly organized and existing under the laws of a state other than the State of South Carolina; authorized to do business in South Carolina; managing Pine Hill Apartments in Orangeburg, SC; and with a registered agent Cheryl Ferraro of 474 Wando Park Blvd., Suite 102, Charleston, SC 29464.
4. Venue is proper in Orangeburg County, State of South Carolina.
5. On or about September 2, 2016, Plaintiff was lawfully at Pine Hill Apartments located on Yellow Jasmine in Orangeburg, South Carolina, as a tenant of Defendants. Plaintiff walked

up the stairway to visit a friend in Apartment #352 on the third floor at approximately 8:00 o'clock a.m. Upon leaving the third floor, Plaintiff slipped on the slippery steps, falling all the way down to the second floor. Plaintiff suffered with excruciating pain in her right leg, ankle, and foot.

6. Despite the hazardous conditions, there were no caution signs marking the area or warnings indicating a hazardous condition.
7. Upon information and belief, the steps were in a condition that created a slipping hazard.
8. Plaintiff fell down steps from the third floor to the second floor due to said hazardous conditions.
9. Plaintiff could not grip or hold on to the railings for support to avoid slippery steps and thus fell, causing her to fall down a flight of stairs. Plaintiff injured her right left, ankle and foot, suffering excruciating pain as a result of the fall.
10. Defendants knew or should have known there was a foreseeable condition on the steps, yet placed no warnings or cautions of said condition, nor made efforts to correct or prevent said hazardous conditions.
11. Defendants were directly responsible for and had direct control over the condition of the Pine Hill Apartments, including the outdoor stairs, so as to ensure the safety of its customers, including but not limited to Plaintiff.
12. Defendants were operating under the policies and procedures put into place by Defendants at the direction, or lack thereof, from said Defendants.
13. As a result of Defendants' negligence, carelessness, recklessness, willfulness, wantonness, and gross negligence, Plaintiff received serious injuries to her body, including but not limited to her back, buttocks, right leg, right upper thigh, and right foot, causing her to be under the care of a doctor, to incur medical expenses, and to experience severe pain.

Plaintiff has suffered serious injuries and will in the future experience pain and suffering, and she will incur future medical bills.

14. Defendants were negligent, careless, reckless, willful, wanton, and grossly negligent, in the following particulars:
- a. In permitting and allowing a wet, slippery substance to remain on the steps in the stairway;
 - b. In failing to properly place a warning device in the area so that tenants and visitors using the facilities of the apartment complex were aware of the hazard on the stairs;
 - c. In failing to properly maintain the stairs and railings of the apartments, and particularly the steps/stairway in the area of the accident, in a clean and safe condition for tenants and visitors using the facilities of the apartment;
 - d. In failing to warn tenants and visitors, including Plaintiff, of the stairs'/stairways' hazardous condition;
 - e. In allowing a substance to collect and remain on the steps;
 - f. In failing to adequately supervise and oversee the apartment complex so as to prevent such a hazardous stairway condition;
 - g. In failing to properly train, monitor, hire, fire, and supervise its employees;
 - h. In failing to monitor the steps/stairway for hazards; and
 - i. In such other and further particulars as may be presented at the trial of this matter.

All of which combined and concurred as a direct and proximate cause of the injuries and damages suffered by Plaintiff herein, said acts being in violation of the statutes and laws of the State of South Carolina.

15. As a result of Defendants' negligence, negligence per se, recklessness, carelessness, willfulness, wantonness, and gross negligence in the operation of their premises and businesses, Plaintiff suffered serious, permanent and debilitating bodily injuries causing Plaintiff to be under the care of a doctor, incur medical expenses, to experience severe and excruciating pain, lose wages, and suffered serious and permanent injuries which has and will in the future cause her to endure great physical pain, suffering mental anguish, emotional distress and ultimately cause Plaintiff to incur future medical bills and wage loss.

WHEREFORE, Plaintiff prays for judgment against Defendants for actual damages and for punitive damages as may be determined by the trier of fact, the cost of this action, and for such other and further relief as this Court may deem just and proper.

s/David R. Williams

David R. Williams, SC Bar #77899
Charlie H. Williams, III SC Bar #79897
Virginia W. Williams, SC Bar #77898
WILLIAMS & WILLIAMS
1281 Russell Street (29115)
Post Office Box 1084
Orangeburg, South Carolina 29116
Tel: 803.534.5218
Fax: 803.928.5190
Email: williamsdr@williamsattys.com
williamsvw@williamsattys.com

August 19, 2019
Orangeburg, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

Shanika Void,)
)
Plaintiff,)
)
vs.)
)
Pine Hill Apartments, LP, and JDC)
Management, LLC,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

C/A NO. 2019-CP-38-00190

**PINE HILL APARTMENTS, LP'S
ANSWER TO AMENDED COMPLAINT

(Jury Trial Demanded)**

Answering the Amended Complaint of Plaintiff Shanika Monique Void (the "Complaint"), Defendant Pine Hill Apartments, LP ("Pine Hill" or "Defendant") respectfully alleges and shows as follows:

GENERAL DENIAL

Except as expressly admitted herein each and every allegation of Plaintiff's Complaint is denied.

FIRST AFFIRMATIVE DEFENSE

The Complaint and the causes of action contained therein fail to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE
(Answer to Allegations in Complaint)**

1. Pine Hill lacks sufficient information to form a belief as to the truth of the allegations contained in Paragraph 1 of the Complaint and therefore denies the same.
2. Pine Hill denies the allegations contained in Paragraph 2 of the Complaint which imply it is organized as a corporation. Answering the allegations of Paragraph 2 of the Complaint further, Pine Hill states that it is a Limited Partnership duly organized and existing under

the laws of the State of South Carolina and is authorized to do business as an apartment complex. Pine Hill further admits that it owns an apartment complex located at 117 Yellow Jasmine Road, Orangeburg, South Carolina 29115 (the "Pine Hill Apartments"). Pine Hill denies the remainder of the allegations contained in Paragraph 2 of the Complaint.

3. Upon information and belief, Pine Hill denies the allegations contained in Paragraph 3 of the Complaint which imply that Defendant JDC Management, LLC ("JDC") is organized as a corporation. Answering the allegations of Paragraph 3 further, Pine Hill admits that JDC as of the date of this Answer and as of September 2, 2016 was engaged as a property manager associated with the Pine Hill Apartments. Pine Hill admits the remaining allegations contained in Paragraph 3 of the Complaint upon information and belief.
4. Pine Hill admits the allegations contained in Paragraph 4 of the Complaint.
5. Pine Hill denies the allegations contained in Paragraphs 5 through 11 of the Complaint.
6. Answering Paragraph 12 of the Complaint, Pine Hill admits that policies and procedures were put in place by Defendants regarding the operation of the Pine Hill Apartments. Pine Hill denies the remaining allegations of Paragraph 12.
7. Pine Hill denies the allegations contained in Paragraphs 13 through 15 of the Complaint.
8. Pine Hill denies the allegations contained in the Plaintiff's prayer.

FOR A THIRD AFFIRMATIVE DEFENSE

9. The Plaintiff's claims are barred or reduced by the doctrine of Comparative Negligence.

FOR A FOURTH AFFIRMATIVE DEFENSE

10. Pine Hill alleges that the Plaintiff's alleged injuries and damages, if any, were the direct and proximate result of the negligence, gross negligence, recklessness and/or willfulness on the

part of persons and/or entities over which Defendant has no control and for whom it is not responsible (including but not limited to the Plaintiff), which negligent, grossly negligent, reckless and/or willful actions were not foreseeable and which intervened and acted as a direct, proximate, and superseding cause of the damages and injuries, if any, allegedly sustained by the Plaintiff.

FOR A FIFTH AFFIRMATIVE DEFENSE

11. Pine Hill alleges that to the extent the Plaintiff has failed to mitigate her damages in the manner provided by law, such failure to mitigate constitutes a complete defense and bar to her causes of action.

FOR A SIXTH AFFIRMATIVE DEFENSE

12. Pine Hill alleges an act of God as a complete defense to this action.

FOR A SEVENTH AFFIRMATIVE DEFENSE

13. Pine Hill alleges that any injuries and damages sustained by the Plaintiff as a result of the matters alleged in the Complaint could not be avoided and Defendant does plead an unavoidable accident as a bar to this action.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

14. Pine Hill alleges that to the extent the Plaintiff has failed to mitigate her damages in the manner provided by law, such failure to mitigate constitutes a complete defense and bar to her causes of action.

FOR A NINTH AFFIRMATIVE DEFENSE

15. Pine Hill alleges that the Plaintiff is not entitled to an award of punitive damages to the extent that such an award is barred by the Constitution of the United States and the Constitution of South Carolina. Defendant further alleges that any award of punitive

damages would violate the prohibitions against excessive fines found in the Eighth Amendment of the Constitution of the United States as applied to the states by way of the due process clause of the Fourteenth Amendment to the Constitution of the United States. Further, any award of punitive damages would violate the guarantee of due process found in the Fourteenth Amendment of the Constitution of the United States because of the lack of objective guidelines on which a jury might base its award and further that such guidelines, to the extent that they exist, are arbitrary and void for vagueness.

FOR A TENTH AFFIRMATIVE DEFENSE

16. Plaintiff has not pleaded any proper basis for the recovery of punitive damages. Specifically, Plaintiff has failed to plead any wrongful, grossly negligent, willful, wanton and/or reckless conduct on the part of Pine Hill which would justify the recovery of punitive damages. Further, no conduct of Pine Hill was reckless, willful, or wanton, and thus, Plaintiff is not entitled to punitive damages in this matter.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

17. Pine Hill pleads the limitations and caps on punitive damages imposed by S.C. Code § 15-32-530.

FOR A TWELFTH AFFIRMATIVE DEFENSE

18. Pine Hill pleads applicability of The Economic Development, Citizens and Small Business Protection Act of 2005, effective July 1, 2005, which amended S.C. Code Ann. §§ 15-38-15 [joint and several liability], and other pertinent statutory sections, and invokes the remedies and procedures provided therein. Specifically, Pine Hill submits that it is entitled to a proper apportionment of fault among all other potential tortfeasors, whether they are named as a defendant or not.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE

19. To the extent that Plaintiff has received payments from and granted releases to other parties against whom Plaintiff has claimed liability in tort for the same injury for which Plaintiff claims Pine Hill has liability, Pine Hill is entitled to set-off the greater of the amount stipulated to in such release or the amount of consideration paid for said such release from a verdict in this case, if any.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE

20. Pine Hill reserves the right to assert any other defenses that may emerge or become available during the discovery process and are supported by fact and law. Pine Hill reserves the right to amend this answer to insert such defenses.

WHEREFORE, having fully answered the Amended Complaint of Plaintiffs, Defendant Pine Hill prays that the Complaint be dismissed with prejudice, for costs of this action, and for such other and further relief as this Court deems just and proper.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

s/ Jordan M. Crapps
Jordan Crapps (SC Bar No. 100580)
1201 Main Street, Suite 1200
Post Office Box 7368 (29202)
Columbia, SC 29201
(803) 779-1833 (Ofc)
(803) 779-1767 (Fax)
jcrapps@gwblawfirm.com

James M. Dedman, IV (SC Bar No. 70664)
6805 Morrison Blvd., Suite 200
Post Office Box 12250 (28220)
Charlotte, NC 29211
(704) 552-1712 (Ofc)
(704) 362-4850 (Fax)
jdedman@gwblawfirm.com

Attorneys for Pine Hill Apartments, LP

September 3, 2019

4. On August 14, 2019, the parties filed a stipulation whereby Plaintiff agreed to not seek enforcement of the judgment or Order of Damages against Pine Hill until resolution of the July Motion to Set Aside and Pine Hill's Motion to Alter or Amend.
5. On August 19, 2019, Plaintiff filed an Amended Summons and Complaint in this matter which superseded the original Complaint and is now the operative pleading in this matter.
6. On September 3, 2019, Pine Hill timely filed an Answer to the Amended Complaint.
7. Pine Hill respectfully requests of the Court an Order setting aside the "Order of Default" and the "Order" awarding damages for, but not limited to the following reasons:
 - a. The Amended Complaint, once filed, renders the previous Complaint moot, dead letter, superseded, and otherwise of no force or effect;
 - b. Likewise, the "Order of Default," based on the original Complaint and upon which the Order of Damages relies, is also rendered moot or a nullity by the filing of the Amended Complaint.
 - c. Further, the Order of Damages, which is reliant on the superseded original Complaint and moot Order of Default, is equally of no force or effect.
 - d. There can be no prejudice to the Plaintiff in setting aside the Order of Default and the Order of Damages as Plaintiff voluntarily amended her Complaint, Pine Hill timely answered the same, and the default was entered on a Complaint which is now a nullity.
8. Pine Hill respectfully requests an Order of this Court (1) finding that the original Complaint is superseded by the Amended Complaint, (2) Accepting Pine Hill's Answer to the Amended Complaint as an operative and timely responsive pleading, (3) finding

the Order of Default and Order of Damages null and void or otherwise setting the orders aside, and (4) relieving Pine Hill from the Order of Damages and the Entry of Default.

9. Pine Hill specifically incorporates by reference the bases and requests for relief included in its July Motion to Set Aside.

Pine Hill specifically reserves the right to add additional grounds and supplement this motion in the future. This motion will be supported by a memorandum to be submitted in the future, affidavits, applicable case and statutory law, and any such matters as the Court may deem just and proper. Counsel for Defendant Pine Hill certifies that he has consulted with Plaintiff's counsel regarding the relief sought in its July Motion to Set Aside to no avail and additional consultation with Plaintiff's counsel would serve no useful purpose.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

s/ Jordan M. Crapps
Jordan Crapps (SC Bar No. 100580)
1201 Main Street, Suite 1200
Post Office Box 7368 (29202)
Columbia, SC 29201
(803) 779-1833 (Ofc)
(803) 779-1767 (Fax)
jcrapps@gwblawfirm.com

James M. Dedman, IV (SC Bar No. 70664)
6805 Morrison Blvd., Suite 200
Post Office Box 12250 (28220)
Charlotte, NC 29211
(704) 552-1712 (Ofc)
(704) 362-4850 (Fax)
jdedman@gwblawfirm.com

Attorneys for Pine Hill Apartments, LP

September 11, 2019

1. This matter arises out of Plaintiff's alleged September 2, 2016, slip and fall occurring on stairs at the Pine Hill Apartments located at 117 Yellow Jasmine, Orangeburg, South Carolina 29115.
2. Plaintiff filed her Complaint on February 4, 2019, alleging causes of action sounding in negligence.
3. According to affidavits filed with this Court by Plaintiff, Plaintiff attempted service by:
 - a. Mailing "a copy of the Summons and Complaint via U.S. Postal Mail, Certified-Restricted Delivery to Cheryl Finch, Registered Agent, for Pine Hill Apartments, LP, 216 Seven Farms Drive, Suite 210, Charleston, SC 29492." The Summons and Complaint "was returned by the U.S. Postal Service as Return to Sender, Attempted-Not Known Unable to Forward" and
 - b. Personally serving the Summons and Complaint on "Pine Hill Apartments, LP by Service on the Property Manager (Brandon Wages) on 02/28/2019 at 12:45 p.m. at his POE located at 117 Yellow Jasmine Road, Orangeburg, S.C. 29115."
4. Defendant owns the apartment complex known as the Pine Hill Apartments while the Apartments are managed by the property management service JDC Management, Inc. ("JDC") pursuant to a Management Agreement. (See, Affidavit of Cheryl Ferraro attached hereto as **Exhibit A**).
5. JDC is not authorized to accept service of process on behalf of the Pine Hill Apartments, LP. (See Affidavit of Cheryl Ferraro attached hereto as **Exhibit A**).
6. Brandon Wages, the recipient of the attempted personal service according to the Affidavit of Personal Service, is an employee of JDC as a maintenance technician and has never

been employed by Defendant and is not a “property manager”. (Affidavit of Brandon Wages, attached hereto as **Exhibit B**).

7. Brandon Wages does not have the authority to accept service on behalf of Defendant. (See, Affidavits of Cheryl Ferraro and Brandon Wages, attached hereto as **Exhibits A and B**).
8. According to the affidavit of service filed in connection with the Notice of Damages Hearing, the notice of hearing was sent by Plaintiffs to the same address which was previously returned as undeliverable.
9. This attempted notice is deficient as Plaintiff was clearly put on notice and aware that this address was not Defendant’s last known address as required by Rules 55(b)(3) and (5)(a), SCRCP.
10. Defendant did not have any notice of the Damages Hearing.
11. Defendant requests the Court first to set aside the Order of Default and then relieve them from the Order of Damages pursuant to Rules 4(d)(3), 12(b)(2), (5), and (6), 55(c) and 60(b) for the following reasons:
 - a. Service of the Summons and Complaint on Defendant was improper and cannot support entry of default or default judgment in, but not limited to, the following particulars:
 - i. Service via certified mail, return receipt requested cannot be the basis for the entry of a default or a judgment by default unless the return receipt indicates acceptance by the Defendant. (Rule 4(d)(8), SCRCP). Plaintiff’s certified mail return receipt was not executed by anyone, let alone the

Defendant. (See, Affidavits of Cheryl Ferraro and Brandon Wages, attached hereto as **Exhibits A and B**); and

- ii. Rule 4(d)(3) requires service on partnerships “by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process...” Plaintiffs delivery of the Summons and Complaint to Brandon Wages is ineffectual and insufficient because he is not an officer, a managing or general agent, or an agent authorized by appointment or law to receive service of process for Defendant. (See, Affidavits of Cheryl Ferraro and Brandon Wages, attached hereto as **Exhibits A and B**).
- b. This Court does not have personal jurisdiction over Defendant because it was not properly served;
- c. The relief requested is for good cause shown as a result of mistake, inadvertence, surprise, or excusable neglect (See, Affidavits of Cheryl Ferraro and Brandon Wages, attached hereto as **Exhibits A and B**).
- d. Defendant should be relieved from the Order of Judgment because of mistake, inadvertence, surprise or excusable neglect and because the judgment is void.
- e. The relief is timely requested;
- f. Defendant has meritorious defenses;
- g. Plaintiff will not be prejudiced by the requested relief; and
- h. Plaintiff has failed to allege facts sufficient to establish liability against them in, but not limited to, the fact that the Complaint fails to allege that Defendant had actual or constructive knowledge of the alleged defective or dangerous condition

which led to Plaintiff's injury but rather merely and insufficiently pleads that "Defendant knew or should have known there was a **foreseeable condition** on the steps..." (See, Complaint, ¶ 9 (emphasis added)).

THEREFORE, Defendant respectfully requests an Order of this Court:

- a. Finding that service of process on Defendant was insufficient;
- b. Finding that the Court lacks personal jurisdiction due to improper service;
- c. Finding that the entry of judgment and judgment in this case is void or otherwise setting aside both the entry of default and default judgment;
- d. Finding that the notice of damages hearing was insufficient;
- e. Relieving Defendant from the Order of Damages filed on July 8, 2019; and
- f. Expanding time to answer or otherwise respond to the Complaint until 30 days following the entry of such order.

Defendant specifically reserves the right to add additional grounds and supplement this motion in the future. This motion will be supported by a memorandum to be submitted in the future, affidavits, applicable case and statutory law, and any such matters as the Court may deem just and proper. Counsel for Defendant certifies that he tried to consult with Plaintiff's counsel on several occasions prior to filing this motion but such consultation could not be timely held and consultation with Plaintiffs counsel would likely serve no useful purpose.

{Signature page to follow}

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

s/ Jordan M. Crapps

Jordan Crapps (SC Bar No. 100580)

1201 Main Street, Suite 1200

Post Office Box 7368 (29202)

Columbia, SC 29201

(803) 779-1833 (Ofc)

(803) 779-1767 (Fax)

jcrapps@gwblawfirm.com

James M. Dedman, IV (SC Bar No. 70664)

6805 Morrison Blvd., Suite 200

Post Office Box 12250 (28220)

Charlotte, NC 29211

(704) 552-1712 (Ofc)

(704) 362-4850 (Fax)

jdedman@gwblawfirm.com

Attorneys for Pine Hill Apartments, LP

July 18, 2019

EXHIBIT A

7. On July 11, 2019 The Humanities Foundation received the Order signed by the Honorable Judge James B. Jackson and filed with the Orangeburg County Court of Common Pleas on July 8, 2019.
8. Brandon Wages is not an employee, property manager, officer, managing or general agent, or an agent authorized or appointed by law to receive service of process for Pine Hill Apartments, LP.
9. Likewise, Brandon Wages is not an employee, property manager, officer, managing or general agent, or an agent authorized or appointed by law to receive service of process for HF Pine Hill, HH Pine Hill, The Humanities Foundation, or Humanities Housing.
10. Upon information and belief, Brandon Wages is a maintenance technician for JDC Management, LLC.
11. JDC Management, LLC manages the property and apartment complex owned by Pine Hill Apartments, LP pursuant to a Management Agreement.
12. JDC Management, LLC is not authorized or appointed by law to receive service of process for Pine Hill Apartments, LP.
13. In fact, the Management Agreement between Pine Hill Apartments, LP and JDC Management, LLC specifically dictates that JDC Management “is not authorized to accept service of process on behalf of [Pine Hill Apartments, LP].”
14. There is no record of Pine Hill Apartments, LP, HF Pine Hill, HH Pine Hill, The Humanities Foundation, or Humanities Housing ever receiving the Notice of Damages Hearing.
15. In fact, following a letter from opposing counsel dated November 10, 2016 (nearly fifteen months prior to the filing of the Complaint in this matter) there is no record of Pine Hill

Apartments, LP, HF Pine Hill, HH Pine Hill, The Humanities Foundation, or Humanities Housing having received any information or documents related to this matter.

16. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER THE AFFIANT SAYETH NOT.

Executed this 17th day of July, 2019.


Cheryl Ferraro

SUBSCRIBED AND SWORN BEFORE

Me this 17th day of July, 2019


Notary Public

My Commission Expires: 1/31/2024



EXHIBIT B

7. In fact, to the best of my knowledge, I am not authorized to accept service of process on behalf of my own employer, JDC Management, LLC.

8. I declare under penalty of perjury that the foregoing is true and correct.

FURTHER THE AFFIANT SAYETH NOT.

Executed this 18 day of July, 2019.

Brandon A Weger
Brandon Wages

SUBSCRIBED AND SWORN BEFORE

Me this 18th day of July, 2019

Julie Ann Davis
Notary Public

My Commission Expires: 1/31/2024



STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

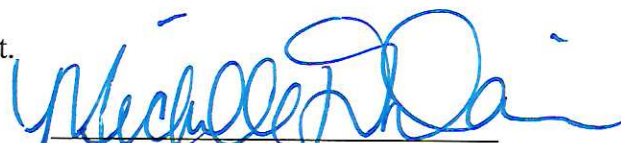
IN THE PROBATE COURT
Case No. 2019-CP-38-00190

Shanika Void)
)
Plaintiff,)
)
-vs-)
)
Pine Hill Apartments, LP and JDC Management,)
LLC,)
)
Defendants.)
_____)


AFFIDAVIT OF SERVICE

PERSONALLY, APPEARED BEFORE ME, Michelle D. Davis, who after being duly sworn doth depose and states:

1. I am employed with Williams & Williams as paralegal for David R. Williams/Virginia W. Williams, who represents the Plaintiff, Shanika Void.
2. That on August 30, 2019, I mailed a copy of the e-filed Amended Summons and Complaint, e-filed August 19, 2019, in the above captioned matter via certified mail to Cheryl Ferraro, registered agent for JDC Management, LLC, 474 Wando Park Blvd., Suite 102, Charleston, SC 29464.
3. That on **September 12, 2019**, said mail to Cheryl Ferraro, was signed for as evidenced by the attached USPS Tracking sheet.


Michelle D. Davis

Sworn to before me this 19th
Day of September 2019



Notary Public for South Carolina
My commission expires: 10-11-2027

Track Another Package +

Tracking Number: 70190160000090321649

Remove X

Your item was delivered to an individual at the address at 5:09 pm on September 12, 2019 in MOUNT PLEASANT, SC 29464.

✓ Delivered

September 12, 2019 at 5:09 pm
Delivered, Left with Individual
MOUNT PLEASANT, SC 29464

Get Updates ▾

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Tracking History

Product Information

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ELECTRONICALLY FILED - 2019 Sep 19 12:14 PM - ORANGEBURG - COMMON PLEASANT - CASE# 20190603880190

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG)	THE FIRST JUDICIAL CIRCUIT
Shanika Void,	)	Civil Action No.: 2019CP3800190
)	
)	
Plaintiff,)	
)	
v.	)	ANSWER OF DEFENDANT JDC
	)	MANAGEMENT, LLC
Pine Hill Apartments, LP and JDC	)	TO PLAINTIFF'S COMPLAINT
Management, LLC,)	
)	
Defendants.)	

COMES NOW, the Defendant, JDC Management, LLC, by and through its undersigned attorneys, answering the Complaint of the Plaintiff, would allege and show unto the Court:

FOR A FIRST DEFENSE

1. Each and every allegation of the Plaintiff's Complaint not specifically admitted herein is denied.
2. Defendant is without information to form a belief as to the allegations of paragraph 1 and therefore denies the same.
3. Upon information and belief, paragraphs 2-3 are admitted.
4. Defendant is without information to form a belief as to the allegations of paragraphs 4-15 and therefore deny the same.
5. To the extent the Wherefore paragraph contains any allegations against this Defendant, those allegations are denied.

FOR A SECOND DEFENSE

(Failure to State a Claim)

9. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

10. The Defendant would show that the Plaintiff's Complaint fails to state a claim upon which relief can be granted, and, therefore should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE

(Comparative Negligence)

11. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

12. The Defendant would show that such injuries or losses that Plaintiff sustained, if any, was due to and caused by the sole negligence, gross negligence, willfulness, wantonness, carelessness and recklessness of the Plaintiff, combining, concurring and contributing with the negligence, if any, on the part of the Defendant, to such a degree that Plaintiff's recovery is barred by the doctrine of comparative negligence in South Carolina.

FOR A FOURTH DEFENSE

(Intervening and Superseding Negligence)

13. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

14. The Defendant would show that such injuries or losses that Plaintiff sustained, if any, as alleged in Plaintiff's Complaint, was not due to or caused by any negligence on the part of the Defendant, but was rather due to and caused by the contributing, concurring, intervening

or superseding fault, breach of warranty or act or omission of a third party, over which the Defendant had no control.

FOR A SIXTH DEFENSE
(Assumption of Known Risk)

15. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

16. The Defendant would show that the Plaintiff knew of the probable risk of injury or harm resulting from Plaintiff's actions, and therefore, the Defendant would plead the doctrine of assumption of a known risk as a complete bar to this action.

FOR A SEVENTH DEFENSE
(Unavoidable Accident)

17. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

18. The Defendant would show that such injuries or losses that the Plaintiff sustained, if any, as alleged in Plaintiff's Complaint, was not due to or caused by the negligence on the part of the Defendant, but was rather due to and caused by an unavoidable accident, thereby barring any claim whatsoever.

FOR AN EIGHTH DEFENSE
(Waiver and Estoppel)

19. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

20. The Defendant would show that Plaintiff's Complaint is barred by the doctrine of waiver and estoppel.

FOR A NINTH DEFENSE

(Improper Venue)

21. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

22. Defendant pleads the defense of improper venue in the County of Orangeburg, State of South Carolina.

FOR A TENTH DEFENSE

(Statute of Limitations)

23. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

24. The Defendant would show that this action is barred by the applicable Statute of Limitations.

FOR AN ELEVENTH DEFENSE

(Spoliation)

25. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

26. The Defendant would show that Plaintiff's Complaint is barred by the doctrine of spoliation.

FOR A TWELFTH DEFENSE

(Reservation and Non-waiver)

27. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

28. Defendant reserves the right to assert and does not waive any additional further defenses which may be revealed by additional information that may be acquired in discovery or otherwise.

FOR A THIRTEENTH DEFENSE

(Punitive Damages)

29. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

30. The Defendant alleges that the Plaintiff's claim for punitive damages violates both the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of any meaningful standard and is inconsistent with due process guarantees.

31. The Defendant alleges that the Plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendments to the United States Constitution and Article I, Section 3 of the South Carolina Constitution because, even if it could be argued the standard governing the imposition of punitive damages exists, the standard would be void due to vagueness.

32. The Defendant alleges that the Plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment to the United States Constitution and Article I, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the Defendant.

33. The Defendant alleges that the Plaintiff's claim of punitive damages violates the doctrine of separation of powers and Article I, Section 3 of the South Carolina Constitution because punitive damages are a creation of the Judicial Branch of government which invades the province of the Legislative Branch of government.

34. Defendant would show, upon information and belief, that the Plaintiff's claim for punitive Damages violates the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the

Constitution of the United States of America in that it violates the double jeopardy clause in that Defendant could be subjected to multiple awards of punitive damages for the same set of facts; the self-incrimination clause is being violated because Defendant can be compelled to give testimony against itself in a penalty situation such as punitive damages; the assessment of punitive damages by a burden of proof less than beyond a reasonable doubt is violative of the Sixth and Fourteenth Amendments in that punitive damages are a fine or penalty and are, therefore, quasi-criminal in nature; Plaintiff's claim for punitive damages violates Defendant's right to access the courts as guaranteed by the Seventh and Fourteenth Amendments because the threat of an award of punitive damages chills the Defendant's exercise of that right; the Plaintiff's claim for punitive damages violates the Eighth Amendment's guarantee that excessive fines shall not be imposed; the Plaintiff's claim for punitive damages violates both the due process and equal protection clauses of the Fourteenth Amendment in that the standard for awarding either punitive damages is unduly vague and, therefore, violates both procedural and substantive due process safeguards; therefore, the Plaintiff's claim for punitive damages should be dismissed.

FOR A FOURTEENTH DEFENSE

(Charitable Immunity)

35. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

36. Defendant pleads the defense of charitable immunity as set forth in the South Carolina Code Annotated.

FOR A FIFTHTEENTH DEFENSE

(Governmental Immunity)

37. The allegations contained in the preceding paragraphs, not inconsistent herewith, are hereby realleged as if set forth herein verbatim.

38. Defendant pleads the defense of governmental/sovereign immunity as set forth in the South Carolina Code Annotated.

WHEREFORE, having fully answered, the Defendant prays that the Plaintiff's Complaint be dismissed with costs, for attorneys' fees and such other and further relief this Court deems just and proper; and

The Defendant demands a jury trial.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

s/Ryan C. Holt
Ryan C. Holt
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

ATTORNEYS FOR DEFENDANT

Columbia, South Carolina

October 29, 2019

- (1) Mailing “a copy of the Summons and Complaint via U.S. Postal Mail, certified-Restricted Delivery to Cheryl Finch, Registered Agent, for Pine Hill Apartments, LP, 216 Seven Farms Drive, Suite 210, Charleston SC 29492. The Summons and Complaint “was returned by the U.S. Postal Service as Return to Sender, Attempted-Not Known Unable to Forward; and
- (2) Personally serving the Summons and Complaint on “Pine Hill Apartments, LP by Service on the Property Manager (Brandon Wages) on 2/28/2019 at 12:45 p.m. at his POE located at 117 Yellow Jasmine Road, Orangeburg, S.C. 29115.

As noted in Pine Hill’s Motion, Pine Hill owns the Apartments located at 117 Yellow Jasmine Road but the Apartments are managed by JDC Management Company. Brandon Wages, the person who allegedly received personal service, is a maintenance technician employee of JDC Management Company, has never been employed by Pine Hill, is not authorized to accept service on behalf of Pine Hill, and is not a “property manager.” (See Affidavits of Brandon Wages and Cheryl Ferraro, attached to Pine Hill’s Motion).

Plaintiff’s proceeded to request and obtain a damages hearing based on an alleged entry of default. Plaintiff’s sent the Damages Hearing Notice to the same address that was previously returned as undeliverable. (See Order ¶ 2). Accordingly, Defendants did not receive any notice of the Damages Hearing.

At the damages hearing, where Pine hill was not present, Plaintiff was awarded \$250,000 “in actuals for her medical expenses, expected future medical expenses, pain and suffering, future pain and suffering, loss of enjoyment of life, future loss of enjoyment of life, and punitive damages as a result of this accident.” (See Order, p. 9). According to the Damages Order,

Plaintiff presented approximately \$6,000 in medical bills and approximately \$2,700 in lost wages. Therefore, the award was approximately 29 times the amount of actual damages claimed at the hearing. The only witness at the hearing was Plaintiff. There was no testimony from a treating physician, witness or expert witness.

Following Pine Hill's initial Motion, Plaintiff voluntarily amended her Complaint to add JDC Management as a Defendant on August 19, 2019. Pine Hill timely filed an Answer to this Amended Complaint on September 3, 2019.

ARGUMENT

Pine Hill moves pursuant to Rules 52(b) and 59(e) to alter or amend the Order of Damages. First, Rule 52(b), SCRCPP, provides that a party may move within ten (10) days of written notice of entry of judgment for the Court to amend its findings or make additional findings and to amend the judgment accordingly. Specifically, Rule 52(b) permits defendants to question the sufficiency of the evidence to support the Court's actual findings when, as here, the findings were made without a jury. Second, Rule 59(e), SCRCPP, provides an alternative vehicle to seek alteration or amendment of a judgment. The purpose of a motion to alter or amend is "to request the trial judge to reconsider matters properly encompassed in a decision on the merits." *Coward Hund Constr. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999).

1. The Court improperly found that Pine Hill had been properly served the Complaint or properly notified of the Damages Hearing.

In the Order, the Court found that Pine Hill had been properly served pursuant to S.C. Code Ann. Section 15-9-350 – the non-resident motorist statute. (See Order ¶ 2). For the reasons set forth below, this finding is erroneous and the Order should be altered or amended (or set aside) because service of process was actually never effectuated.

Pursuant to Rule 4(d)(3), SCRCPP, service of process on partnerships shall be executed “by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process...” (Rule 4, SCRCPP). Plaintiff’s delivery of the Summons and Complaint to Brandon Wages is ineffectual and insufficient because he is not an officer, a managing or general agent, or an agent authorized by appointment or law to receive service of process for Pine Hill. (See, Affidavits of Cheryl Ferraro and Brandon Wages, attached as Exhibits A and B to Pine Hill’s Motion).

Plaintiff’s only other alleged attempt to serve the Summons and Complaint was by certified mail. Service by certified mail cannot be the basis for the entry of a default judgment or a judgment by default unless the return receipt indicates acceptance by the defendant. (Rule 4(d)(8), SCRCPP). According to Plaintiff’s filed certificates of service, the Plaintiff’s return receipt was not signed by anyone, let alone authorized Pine Hill personnel. Therefore, it cannot be the basis of this default and Damages Order.

Because Plaintiff was never properly served the Complaint, the Order should be set aside, or otherwise altered or amended to relieve Pine Hill from its implications.

2. Given if service was proper and the entry of default stands, which is denied, the Court nevertheless improperly found for Plaintiff and awarded damages based on an insufficient Complaint.

It is important to note that default does not preclude defendants from challenging the sufficiency of the complaint allegations as a basis for the judgment entered in this case. *Mutual Sav. & Loan Assoc. v. McKenzie*, 274 S.C. 630, 632-33, 266 S.E.2d 423, 424-25 (1980). “An objection that the complaint does not state facts sufficient to constitute a cause of action is not waived by a default.” *Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 254, 321 S.E.2d 194, 196 (Ct. App. 1984). A default does not admit that the facts plead are sufficient to constitute a cause of

action simply because the default confession is limited to the material facts well pleaded in the complaint. *Gadsden*, 89 S.C. 483, 72 S.W. 15 (1911). Similarly, a default does not admit an allegation that is a mere conclusion of law. *Id.*

Plaintiff has failed to allege facts sufficient to constitute any cognizable cause of action and certainly has failed to allege facts to support future medicals or punitive damages. The law of South Carolina is clear: in order to be liable to someone who was injured by a dangerous condition, the property owner must have either (1) created the dangerous condition causing the injury, or (2) have knowledge of its existence and failed to warn or remedy the dangerous condition prior to Plaintiff's fall. *See, e.g., Wintersteen v Food Lion, Inc.*, 344 S.C. 32, 35, 542 S.E.2d 728, 729 (2001). "In the case of a foreign substance, the plaintiff must demonstrate either that the substance was placed there by the defendant or its agents, or that the defendant had actual or constructive notice the substance was on the floor at the time of the slip and fall." *Id.*

In contradiction to this clear standard, Plaintiff has merely alleged instead that "Defendants knew or should have known there was a foreseeable condition on the steps, yet placed no warnings or cautions of said condition, nor made efforts to correct or prevent said hazardous conditions." (Complaint, ¶9). Additionally, as to the hazardous condition itself, Plaintiff can only allege that "*Upon information and belief*, the steps were in a condition that created a slipping hazard." (Complaint, ¶6 (emphasis added)). These pleadings are wholly insufficient to state any cause of action under South Carolina law. Therefore, the Order should be altered or amended to relieve Pine Hill from its implications because the pleadings and Order do not set forth a cause of action recognized under South Carolina law.

- 3. The Court improperly awarded punitive damages and awarded damages far in excess of damages that bear a reasonable relationship to the alleged harm caused by Defendant.**

The Order must be modified because the Findings of Fact and Conclusions of Law regarding Plaintiff's entitlement to punitive damages are erroneous and/or not supported by competent evidence admitted at the damages hearing. The Order awards a damages award of \$250,000 on a mere \$8,730.46 in actual damages for her medical expenses [\$6,021.56], expected future medical expenses, pain and suffering, future pain and suffering, loss of enjoyment of life, and punitive damages as a result of this accident." The Court does not distinguish any amounts for damages and those for punitive damages.

South Carolina law is clear: punitive damages must be proven by clear and convincing evidence. S.C. Code Ann. § 15-33-135. "Clear and convincing evidence is that degree of proof which will produce in the mind of the trier of facts a firm belief as to the allegations sought to be established." *Duncan v. Ford Motor Co.*, 385 S.C. 119, 138, 682 S.E.2d 877, 886 (Ct. App. 2009). The clear and convincing standard is the highest burden of proof known to civil law, *Austin v. Specialty Transp. Servs., Inc.*, 594 S.E.2d 867, 875 (S.C. Ct. App. 2004), and it is axiomatic that statements made "upon information and belief" cannot rise to the level of clear and convincing." In this case, Plaintiff presented no evidence warranting the imposition of punitive damages.

The imposition of punitive damages is not compulsory or required. *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 19 (1991); *Miller v. City of West Columbia*, 322 S.C. 224, 230-31, 471 S.E. 2d 683, 687 (1996). The entry of default judgment does not obviate the need for determinations of the amount and character of damages. By nature, punitive damages are penal in nature and are, "by definition punishing damages or private fines levied to punish a wrongdoer for reprehensible conduct and to deter its repetition in the future." *Patterson v. I.H. Servs.*, 368 S.E.2d 215, 221 (S.C. Ct. App. 1998). In the absence of knowledge by a tortfeasor of his

conduct, it cannot be said that such conduct is willful, wanton, or reckless or that the imposition of punitive damages would serve to deter the unknown conduct in the future. Rather, punitive damages should only be awarded if a defendant's culpability is so outrageous and reprehensible as to warrant the imposition of further sanctions to achieve punishment or deterrence. *State Farm Mut. Auto Ins. Co. v. Campbell*, 538 U.S. 408, 419 (2003); *BMW of North Am., Inc. v. Gore*, 517 U.S. 559, 575 (1996). Of course, such punishment must fit the crime. *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 584, 686 S.E.2d 176, 183 (2009) (discussing the history of due process limitations on punitive damages); *see also Atkinson v. Orkin Exterminating Co.*, 361 S.C. 156, 170, 604 S.E.2d 385, 392-93 (2004) (quoting *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 582, 134 L. Ed. 2d 809, 116 S. Ct. 1589 (1996) ("few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will satisfy due process"))).

The Order fails to present any factual findings satisfying these high standards. First, the Court announces that its findings are made "upon the preponderance of the evidence." (Order, p. 1). There exists no findings of fact sufficient to satisfy the high clear and convincing standard necessary to establish punitive damages. Further, there exists no facts in the Order or the record that could possibly support the outrageous or reprehensible nature necessary to establish punitive damages. Rather, the allegations, at best, reflect the simplest of slip and fall allegations: "Despite the hazardous conditions, there was no caution signs marking the area or warnings indicating a hazardous condition. Upon information and belief, the steps were in a condition that created a slipping hazard." (Complaint ¶ 5-6).

Further, the Court's award prevents post-judgment review of the punitive damages award. Three guideposts must be satisfied as part of the Court's requisite post-judgment review of punitive damages award: (1) reprehensibility, (2) the ratio between the actual or potential

harm suffered by the plaintiff and the amount of the punitive damages award and (3) comparative penalty awards. *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 585, 686 S.E.2d 176, 183 (2009). The Order fails to provide context, facts, or other information necessary to properly perform this review.

The Order fails to identify any reprehensible conduct it considered when awarding damages. Reprehensibility has been defined by the South Carolina Supreme Court as the consideration of the following factors: (1) the harm caused was physical as opposed to economic, (2) the tortious conduct evidenced an indifference to or a reckless disregard for the health or safety of others, (3) the target of the conduct had financial vulnerability, (4) the conduct involved repeated actions or was an isolated incident, and (5) the harm was the result of intentional malice, trickery, or deceit rather than a mere accident. *Mitchell*, 385 S.C. at 587, 686 S.E.2d at 185. Plaintiff failed to plead or otherwise provide evidence to support any of these factors and, therefore, failed to prove reprehensibility.

Moreover, the Court lumps in the punitive damages award in with the awards for actual damages, pain and suffering, future pain and suffering and future medical expenses. Consequently, there is no way to analyze the ratio between actual or potential harm suffered by the Plaintiff to the amount of the punitive damages awarded. Because these guideposts are not satisfied, the Order should be altered or amended to remove any punitive damages award.

Finally, “Our Supreme Court has held that a judgment should be vacated on general equity principles where the award is patently and greatly out of proportion to the wrongs alleged in the Complaint.” *Williams v. Vereen*, 284 S.C. 219, 223, 325 S.E.2d 337, 340 (Ct. App. 1985). Such is the case here. The Court awarded a default judgment in the amount of \$250,000 based on evidence of a mere \$8,730 in actual damages. Therefore, the award exceeded actual damages by

a factor of 29. There was no testimony from any medical expert, any life care planner, or any other person sufficient to establish any future medical expenses. The award in this case is greatly out of proportion with any evidence of damages or allegations of wrongdoing. Therefore, the Order should be amended or altered to greatly reduce or eliminate the award altogether.

CONCLUSION

For the reasons set forth herein, in its Motion, and those presented at the hearing of this matter, the Order of Damages should be altered, amended, or otherwise set aside to relieve Pine Hill from its implications.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

s/ Jordan M. Crapps
Jordan Crapps (SC Bar No. 100580)
1201 Main Street, Suite 1200
Post Office Box 7368 (29202)
Columbia, SC 29201
(803) 779-1833 (Ofc)
(803) 779-1767 (Fax)
jcrapps@gwblawfirm.com

James M. Dedman, IV (SC Bar No. 70664)
6805 Morrison Blvd., Suite 200
Post Office Box 12250 (28220)
Charlotte, NC 29211
(704) 552-1712 (Ofc)
(704) 362-4850 (Fax)
jdedman@gwblawfirm.com

Attorneys for Pine Hill Apartments, LP

November 18, 2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF ORANGEBURG)
)
 Shanika Void,)
)
 Plaintiff,)
)
 vs.)
)
 Pine Hill Apartments, LP, and)
 JDC Management, LLC)
)
 Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
 C/A NO. 2019-CP-38-00190

**PINE HILL APARTMENTS, LP’S
 MEMORANDUM IN SUPPORT OF ITS
 MOTIONS TO SET ASIDE ORDER OF
 DEFAULT AND TO BE RELIEVED
 FROM ORDER OF DAMAGES**

Defendant Pine Hill Apartments, LP (“Pine Hill”), by and through their undersigned counsel, hereby submits this memorandum in support of its Motion, filed July 18, 2019, to Set Aside this Court’s Order of Default and to be Relieved from the Order of Damages (the “Motion”). By and through its Motion, Pine Hill moved pursuant to Rules 4(d), 12(b)(2), (5), and (6), 55 and 60(b) of the South Carolina Rules of Civil Procedure seeking to set aside the Order of Default and for relief from the Order of Damages. On September 11, 2019, Pine Hill filed its Supplement to the Motion (the “Supplemental Motion” and collectively with the Motion, the “Motions”) seeking the same relief but based on the additional grounds that Plaintiff voluntarily filed an Amended Complaint on August 19, 2019. For all the reasons set forth herein, and its Motions previously filed, Pine Hill’s Motions should be granted.

PROCEDURAL POSTURE AND FACTUAL BACKGROUND

This matter arises originally out of Plaintiff’s alleged September 2, 2016, slip and fall on a staircase at the Pine Hill Apartments located at 117 Yellow Jasmine, Orangeburg, South Carolina 29115. Plaintiff filed her Complaint (which at the time only named Pine Hill as

Defendant) on February 4, 2019, alleging causes of action sounding in negligence. According to the affidavits filed with this Court by Plaintiff, Plaintiff attempted service by

- (1) Mailing “a copy of the Summons and Complaint via U.S. Postal Mail, certified-Restricted Delivery to Cheryl Finch, Registered Agent, for Pine Hill Apartments, LP, 216 Seven Farms Drive, Suite 210, Charleston SC 29492. The Summons and Complaint “was returned by the U.S. Postal Service as Return to Sender, Attempted-Not Known Unable to Forward; and
- (2) Personally serving the Summons and Complaint on “Pine Hill Apartments, LP by Service on the Property Manager (Brandon Wages) on 2/28/2019 at 12:45 p.m. at his POE located at 117 Yellow Jasmine Road, Orangeburg, S.C. 29115.

As noted in Pine Hill’s Motion, Pine Hill owns the Apartments located at 117 Yellow Jasmine Road but the Apartments are managed by JDC Management Company. Brandon Wages, the person who allegedly received personal service, is a maintenance technician employee of JDC Management Company, has never been employed by Pine Hill, is not authorized to accept service on behalf of Pine Hill, and is not a “property manager.” (See, Affidavits of Brandon Wages and Cheryl Ferraro, attached to Pine Hill’s Motion).

Plaintiff proceeded to request and obtained a damages hearing based on an alleged entry of default. Plaintiff sent notice for the damages hearing to the same address that was previously returned as undeliverable. Consequently, Pine Hill did not receive any notice of the damages hearing.

At the damages hearing, where Pine Hill was not present, Plaintiff was awarded \$250,000 “in actuals for her medical expenses, expected future medical expenses, pain and suffering,

future pain and suffering, loss of enjoyment of life, future loss of enjoyment of life, and punitive damages as a result of this accident.” (Order pg. 9). According to the Damages Order, Plaintiff presented approximately \$6,000 in medical bills and approximately \$2,700 in lost wages. Therefore, the award was approximately 29 times the amount of actual damages claimed at the hearing.

Following Pine Hill’s initial Motion, Plaintiff voluntarily amended her Complaint to add JDC Management as a Defendant on August 19, 2019. Pine Hill timely filed an Answer to this Amended Complaint on September 3, 2019.

ARGUMENT

“The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge.” *Roberson v. S. Fin. Of S. Carolina, Inc.*, 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005). Generally, South Carolina favors the “disposition of issues on their merits rather than on technicalities.” *Micronics, Inc. v. S.C. Dep’t of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). Pine Hill requests that the Court alter, amend, reconsider, vacate or set aside the Damages Order for those reasons included in its Motion including but not limited to:

- (1) Plaintiff’s attempts at service of process were not effectual and insufficient and, therefore, this Court did not have personal jurisdiction over the Defendant at the time of the Damages Order because it was not properly served;
- (2) Plaintiff’s Amended Complaint renders the initial complaint, and the default and Order of Damages issued thereon, ineffectual and of no use or effect; and
- (3) Mistake, inadvertence, surprise, or excusable neglect justifies setting aside default and relieving Defendant of the Order of Damages.

As more fully set forth below, these grounds support the setting aside of default and relief from the Order of Damages.

1. Service of Process was insufficient.

Pursuant to Rule 4(d)(3), SCRCPP, service of process on partnerships shall be executed “by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process...” (Rule 4, SCRCPP). Plaintiff’s delivery of the Summons and Complaint to Brandon Wages is ineffectual and insufficient because he is not an officer, a managing or general agent, or an agent authorized by appointment or law to receive service of process for Pine Hill. (See, Affidavits of Cheryl Ferraro and Brandon Wages, attached as Exhibits A and B to Pine Hill’s Motion). Therefore, Plaintiff failed to comply with Rule 4(d)(3), SCRCPP.

Plaintiff’s only other alleged attempt to serve the Summons and Complaint was by certified mail. Service by certified mail cannot be the basis for the entry of a default judgment or a judgment by default unless the return receipt indicates acceptance by the defendant. (Rule 4(d)(8), SCRCPP). According to Plaintiff’s filed certificates of service, the Plaintiff’s return receipt was not signed by anyone, let alone authorized Pine Hill personnel. Therefore, it cannot be the basis of this default and Damages Order.

Plaintiff failed to properly effectuate service of process under either Rules 4(d)(3) or (8). Therefore, because Pine Hill was not sufficiently served with the Summons and Complaint, this Court did not have personal jurisdiction over the Pine Hill to enter default or execute its Order of Damages. Both the Order of Damages and the entry of default should be set aside and Pine Hill should be permitted to appear and Answer the allegations alleged against it – as it has in response to Plaintiff’s Amended Complaint.

2. Plaintiff's Amended Complaint supersedes the original complaint and renders the Order of Damages void.

Second, subsequent to the entry of default, the damages hearing, and Pine Hill's Motion, Plaintiff voluntarily filed an Amended Complaint. "As a general rule, an amended pleading ordinarily supersedes the original and renders it of no legal effect." *Young v. City of Mt. Rainier*, 283 F.3d 567, 572 (4th Cir., 2001) (internal quotations omitted) (quoting *Crysen/Montenay Energy Co. v. Shell Oil Co.*, 226 F.3d 160, 162 (2d Cir. 2000)); see also 6 Charles Alan Wright, et al., *Federal Practice and Procedure* § 1476 (3d ed. 2011) ("A pleading that has been amended ... supersedes the pleading it modifies ... Once an amended pleading is interposed, the original pleading no longer performs any function in the case...."). "As a result, motions directed at the superseded pleading generally are to be denied as moot." *Sigmon v. Byars*, 2014 U.S. Dist. LEXIS 115242, 4 (D.S.C. 2014) (citing, *Hall v. Int'l Union, United Auto., Aerospace & Agric. Implement Workers of Am., UAW*, 2011 U.S. Dist. LEXIS 66084 (W.D.N.C., 2011) (citing, *Colin v. Marconi Commerce Sys. Emps.' Ret. Plan*, 335 F.Supp. 2d 590, 614 (M.D.N.C., 2004); *Turner v. Kight*, 192 F.Supp. 2d 391, 397 (D. Md., 2002)).

Specifically, motions for default judgments should be dismissed and the entry of default should be set aside when based on a superseded complaint. Courts across the country have found "once the amended complaint becomes the operative complaint, a motion for default judgment made on a prior pleading should be denied." *Allstate Ins. Co. v. Yadgarov*, 2014 U.S. Dist. LEXIS 30068, 20-21 (E.D.N.Y., 2014) (citing *Liberty Media Holdings, LLC v. Hawaii Members of Swarm of November 15, 2010 to January 27, 2011*, Sharing Hash File AE340D0560129AFEE8D78CE07F2394C7B5BC9C05, No. 11 Civ. 262 (DAE), 2012 U.S. Dist. LEXIS 54384, 2012 WL 1377003, at *1 (D. Haw. Mar. 27, 2012) (filing an amended

complaint rendered the plaintiff's motion for a default judgment moot), report & recommendation adopted, No. 11 Civ. 262 (DAE), 2012 U.S. Dist. LEXIS 54377, 2012 WL 1377000 (D. Haw. Apr. 18, 2012); *Anderson v. CitiMortgage, Inc.*, No. 11 Civ. 583 (DAE), 2011 U.S. Dist. LEXIS 145947, 2011 WL 6301739, at *1 (D. Haw. Nov. 25, 2011) (same), report & recommendation adopted, No. 11 Civ. 583 (DAE), 2011 U.S. Dist. LEXIS 145077, 2011 WL 6301427 (D. Haw. Dec. 16, 2011); *Mercer v. Csiky*, No. 08 Civ. 11443 (BC), 2010 U.S. Dist. LEXIS 64777, 2010 WL 2671329, at *2-4 (E.D. Mich. June 30, 2010) (listing cases where "courts have denied motions for default judgments as moot due to the filing of an amended complaint"); *Faulkner v. Transp. Made Simple, Inc.*, No. 09 Civ. 2233 (BBM) (TMP), 2010 U.S. Dist. LEXIS 15501, 2010 WL 711152, at *1 (W.D. Tenn. Jan. 28, 2010) (stating that where the plaintiff planned to amend the complaint to add a defendant, "[a] motion for default judgment based on an entry of default on an earlier complaint becomes moot once the amended complaint is filed," and further stating that the clerk's entry of default should be set aside after the amendment), report & recommendation adopted, No. 09 Civ. 2233 (BBM) (TMP), 2010 U.S. Dist. LEXIS 15434, 2010 WL 711148 (W.D. Tenn. Feb. 22, 2010); *Bituminous Cas. Corp. v. Tindle Enterprises, Inc.*, No. 07 Civ. 1158 (DJB), 2009 U.S. Dist. LEXIS 80382, 2009 WL 2843375, at *4 (W.D. Tenn. Aug. 31, 2009) ("A motion for default judgment based on an entry of default on an earlier complaint becomes moot once the amended complaint is filed."); *U.S. ex rel. SimplexGrinnell, LP v. Aegis Ins. Co.*, No. 08 Civ. 01728 (SHR), 2009 U.S. Dist. LEXIS 18707, 2009 WL 577286, at *2 (M.D. Pa. Mar. 5, 2009) (finding that "an amended complaint moots a request for default judgment"); *Rock v. Am. Exp. Travel Related Servs. Co., Inc.*, No. 08 Civ. 853 (GTS) (RFT), 2008 U.S. Dist. LEXIS 101909, 2008 WL 5382340, at *1 (N.D.N.Y. Dec. 17, 2008) (finding that the motion for default judgment "was mooted and/or rendered

untimely" by the filing of an amended pleading); *Lacy v. Hubbard*, No. 08 Civ. 0868 (FCD) (DAD), 2008 U.S. Dist. LEXIS 111540, 2008 WL 2725063, at *5 (E.D. Cal. July 10, 2008) (same); *Dourlain v. United States*, No. 01 Civ. 1251(NAM) (GJD), 2003 U.S. Dist. LEXIS 19582, 2003 WL 22753452, at *2 (N.D.N.Y. Sept. 26, 2003) (same); *Haamid v. United States*, No. 89 Civ. 0780, 1990 U.S. Dist. LEXIS 17149, 1990 WL 210610, at *1 (E.D. Pa. Dec. 18, 1990) (same)).

Similarly, courts consistently hold that once the original complaint is superseded, the entry of default on that pleading is mooted. *Allstate Ins. Co. v. Yadgarov*, 2014 U.S. Dist. LEXIS 30068, 21 (E.D.N.Y., 2014) (citing, *Sheldon v. Khanal*, No. 08 Civ. 3676 (KAM) (LB), 2009 U.S. Dist. LEXIS 91599, 2009 WL 3233093, at *1 n.1 (E.D.N.Y. Sept. 30, 2009) (stating that "the plaintiffs' filing of their Amended Complaint" mooted the prior entry of default), *aff'd in part, vacated in part on other grounds*, 396 F. App'x 737 (2d Cir. 2010); *see also Brewer v. Grossbaum*, No. 12 Civ. 1555 (WBS) (DAD), 2014 U.S. Dist. LEXIS 3346, 2014 WL 119233, at *1 (E.D. Cal. Jan. 9, 2014) ("In light of plaintiff's filing of an amended complaint, however, the court will deny as moot plaintiff's requests for entry of default . . . since plaintiff's amended complaint supersedes the original complaint."); *Hooker v. Goldstein & Assocs., LLC*, No. 12 Civ. 12232 (RHC), 2013 U.S. Dist. LEXIS 166572, 2013 WL 6163638, at *6 (E.D. Mich. Nov. 20, 2013) (noting that the filing of an amended complaint rendered the entry of default on the original complaint moot); *U.S. S.E.C. v. Boey*, No. 07 Civ. 39 (SJM), 2013 DNH 66, 2013 WL 1775444, at *1 (D.N.H. Apr. 25, 2013) (finding that the clerk's entry of default was rendered a "nullity" by the subsequent amendment of the complaint, and the motion for default judgment must therefore be denied); *Winston v. City of Laurel*, No. 12 Civ. 61 (KS) (MTP), 2012 U.S. Dist. LEXIS 156036, 2012 WL 5381346, at *2 (S.D. Miss. Oct. 31, 2012) (same); *Enigwe v.*

Gainey, No. 10 CIV. 684 (LHP), 2012 U.S. Dist. LEXIS 7961, 2012 WL 213510, at *3 (E.D. Pa. Jan. 23, 2012) (same, concerning request for entry of default).

These decisions are based in part on Rule 15(a) of the Federal Rules of Civil Procedure which is, in relevant part, substantially similar to Rule 15(a) of the South Carolina Rules of Civil Procedure. Therefore, the substantial body of federal case law, including that from the District of South Carolina, should be considered instructive. *Maybank v. BB&T Corp.*, 416 S.C. 541, 565, 787 S.E.2d 498, 510 (2016) (“In construing the South Carolina Rules of Civil Procedure, our Court looks for guidance to cases interpreting the federal rules.”). Accordingly, upon the filing of the Amended Complaint, which Pine Hill timely answered, the Entry of Default, Default Judgment and the Order of Damages – all based on the Original Complaint – are moot and should be set aside.

3. The Order of Damages and Default should be set aside pursuant to Rules 55 and 60.

Finally, the Court should set aside the default judgment in this matter for one or all of the reasons established by Rules 55 and 60(b), SCRCP. Rule 55(c) provides that, “[f]or 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).” S.C. R. Civ. P. 55(c). The issue of what is good cause “is within the sound discretion of the court.” *Williams v. Vannolkenburg*, 312 S.C. 373, 375 (Ct. App. 1994). However, the good cause standard is not as rigorous as the excusable neglect standard under Rule 60(b), SCRCP, used when a default judgment has been entered. Pursuant to Rule 60(b), SCRCP, a court may relieve a party of default judgment amount other things, for the following reasons, (1) mistake, inadvertence, surprise, or excusable neglect or (4) the judgment is void. The motion to set aside the judgment must be “made within a reasonable

time” and “not more than one year after the judgment, order, or proceeding was entered or taken. Rule 60, SCRC.

When determining whether a default judgment should be set aside under Rule 60, “the promptness with which relief is sought, the reasons for the failure to act promptly, the existence of [a] meritorious defense, and the prejudice to the other parties are relevant” must all be taken into account. *Hill v. Dotts*, 345 S.C. 304, 309, 547 S.E.2d 894, 897 (Ct. App. 2001) (quoting, *New Hampshire Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50 435 S.E.2d 377, 379 (Ct. App. 1993)). Importantly, a showing of meritorious defense does not require Pine Hill establish that they would prevail on the merits – it only need be a defense which is worthy of judicial inquiry. *See McClurg v. Deaton*, 380 S.C. 563, 573-74, 671 S.E.2d 87, 93 (Ct. App. 2008). Proof of any one of the Rule 60(b) factors – mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, or misrepresentation – is sufficient to show “good cause.” *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009).

Good cause and excusable neglect abounds in this case. Pine Hill was never served the Summons and Complaint and, therefore, Default cannot be entered or sustained. To the extent any of the methods of service of process propounded by the Plaintiff can constitute proper service (which Pine Hill strenuously objects to), Pine Hill did not receive actual notice of the Complaint. Rather, it was served on the employee of a different company that had no relationship to Pine Hill. To the extent that this constitutes service, good cause and inexcusable neglect and inadvertence should be found to excuse the failure to timely respond.

Upon learning of the Order of Damages in addition to the Complaint, Pine Hill filed multiple motions, including this one, seeking to set aside the default. Further, when Plaintiff filed her Amended Complaint, Pine Hill answered within 15 days. Finally, the Plaintiff cannot be

prejudiced by relieving Pine Hill of the Damages Order because the case will proceed anyway as to the newly added defendant – who has timely Answered. Therefore, the merits of the matter will be subject to discovery, motions practice and trial all on the merits of the matter. There can be no prejudice to Plaintiff by permitting Pine Hill to participate in those proceedings to determine this matter on its merits, as opposed to technicalities, which Courts of this State prefer.

In addition, and as explained above, the judgment is void under Rule 60(b) because the Complaint upon which it is based is also void and the court lacked personal jurisdiction due to the Plaintiff's failure to provide proper service.

Further, Pine Hill has numerous meritorious defenses to this action. Namely, neither the Complaint nor the Order of Damages allege or state facts in support of the theory that Pine Hill knew or should have known about the alleged dangerous condition on the stairs. Further, the alleged accident occurred on September 2, 2016, when many schools and public offices were closed because Hurricane Hermine was passing through the midlands. Plaintiff's conduct in walking down an outside staircase in hurricane conditions absolves any liability on behalf of Pine Hill due to assumption of the risk and/or open and obvious hazards.

Therefore, because good cause exists, the judgment is void. Additionally, and to the extent necessary, excusable neglect exists and, therefore, the default should be set aside and Pine Hill relieved of any impact of the Order of Damages.

CONCLUSION

Therefore, for the reasons set forth in its Motion, this Memorandum of Law, and those presented at the hearing of this matter, Default shall be set aside and Defendant Pine Hill should be relieved of the implications of this Court's Order of Damages.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

s/ Jordan M. Crapps
Jordan Crapps (SC Bar No. 100580)
1201 Main Street, Suite 1200
Post Office Box 7368 (29202)
Columbia, SC 29201
(803) 779-1833 (Ofc)
(803) 779-1767 (Fax)
jcrapps@gwblawfirm.com

James M. Dedman, IV (SC Bar No. 70664)
6805 Morrison Blvd., Suite 200
Post Office Box 12250 (28220)
Charlotte, NC 29211
(704) 552-1712 (Ofc)
(704) 362-4850 (Fax)
jdedman@gwblawfirm.com

Attorneys for Pine Hill Apartments, LP

November 18, 2019

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
)
SHANIKA VOID,)
)
)
Plaintiff,)
)
)
vs.)
)
PINE HILL APARTMENTS, LP AND)
JDC MANAGEMENT, LLC,)
)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2019CP3800190

**MOTION TO STRIKE DEFENDANT
PINE HILL'S ANSWER TO THE
AMENDED COMPLAINT.11 19 19**

YOU WILL PLEASE TAKE NOTICE that ten days after the service of this notice upon you or as soon thereafter as counsel may be heard, the undersigned attorneys for Plaintiff will move before the presiding judge of the Orangeburg County Court of Common Pleas for an Order striking Defendant Pine Hill Apartments LP's answer to Plaintiff's Amended Complaint. This motion is premised on Defendant Pine Hill Apartments LP being held in default by this court prior to Plaintiff filing her amended complaint.

WE SO MOVE

S/Virginia W. Williams
Virginia W. Williams 77898
David R. Williams 77899
Charlie H. Williams III 79897
WILLIAMS & WILLIAMS
Post Office Box 1084
Orangeburg, SC 29116
Tel: (803) 534-5218
Fax: (803) 928-5190
Email: ginny@williamsattys.com

Date: November 19, 2019
Orangeburg, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ORANGEBURG	)	C/A NO. 2019-CP-38-00190
)	
Shanika Void,)	
)	
Plaintiff,)	
	)	PINE HILL APARTMENTS, LP'S
vs.	)	MOTION TO ALTER OR AMEND
)	
Pine Hill Apartments, LP,)	
)	
Defendant.)	
_____)	

TO: DAVID R. WILLIAMS, ESQ. AND VIRGINIA W. WILLIAMS, ESQ., ATTORNEYS FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that ten days after the service of this notice upon you or as soon thereafter as counsel may be heard, the undersigned attorneys for Defendant Pine Hill Apartments, LP (“Pine Hill”) will move before the presiding judge of the Orangeburg County Court of Common Pleas for an Order pursuant to the South Carolina Rules of Civil Procedure 52(b) and 59(e) to alter or amend the Order denying Pine Hill’s Motion to Set Aside Default and to relieve Pine Hill from the Order of Damages (Hereinafter, the “Order”).

This Motion is supported by the following grounds:

ARGUMENT

Pine Hill moves pursuant to Rules 52(b) and 59(e) to alter or amend the Order. First, Rule 52(b), SCRCF, provides that a party may move within ten (10) days of written notice of entry of judgment for the Court to amend its findings or make additional findings and to amend the judgment accordingly. Specifically, Rule 52(b) permits defendants to question the sufficiency of the evidence to support the Court’s actual findings when, as here, the findings were made without a jury. Second, Rule 59(e), SCRCF, provides an alternative vehicle to seek alteration or

amendment of a judgment. The purpose of a motion to alter or amend is “to request the trial judge to reconsider matters properly encompassed in a decision on the merits.” *Coward Hund Constr. Co., Inc. v. Ball Corp.*, 336 S.C. 1, 4, 518 S.E.2d 56, 58 (Ct. App. 1999).

1. Attempted service of process on Brandon Wages is not sufficient service of process.

The Court’s Order seems to find that service of process on Brandon Wages was sufficient because, “Brandon Wages could be perceived to be an agent of Defendant Pine Hill.” Perceived agency is not grounds on which service of process can be effected. As such, the grounds upon which service of process is found is insufficient and constitutes an error of law. Therefore, the finding that service of process was sufficient should be amended to find that service of process was not effected.

Rule 4(d)(3) provides that service upon a corporation or upon a partnership may be made “by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process ...” (Rule 4(d)(3), SCRCP). As evidenced by the affidavits of Cheryl Ferraro and Brandon Wages submitted in support of Pine Hill’s Motion to Set Aside, Brandon Wages has never been an employee, manager, officer, or managing or general agent of Pine Hill. (See, Exhibit A and B to Pine Hill’s Motion to Set Aside). Further, as evidenced by the same affidavits, Brandon Wages had no actual authority to accept service of process on behalf of Pine Hill. (See, Affidavit of Brandon Wages, ¶6 (“I have never been authorized to accept service of process on behalf of Pine Hill Apartments, LP ...”); See also, Affidavit of Cheryl Ferraro, ¶8). In fact, Brandon Wages’ employer, JDC Management, is not even authorized to accept service of process on behalf of Defendant Pine Hill. (See, Affidavit of Cheryl Ferraro, ¶12-13 (“JDC Management, LLC is not authorized or appointed by law to receive service of process for Pine Hill Apartments, LP. In

fact, the Management Agreement between Pine Hill Apartments, LP and JDC Management, LLC specifically dictates that JDC Management “is not authorized to accept service of process on behalf of [Pine Hill Apartments, LP]”).

Because neither Brandon Wages nor his employer JDC Management had actual authority to accept service of process as required by Rule 4, SCRCP, the Court finds service of process based on a perceived agency theory. This is not sufficient or based on the law of South Carolina. “Actual appointment for the specific purpose of receiving process normally is expected and the mere fact that a person may be considered to act as defendant’s agent for some purpose does not necessarily mean that the person has authority to receive process.” *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 295, 721 S.E.2d 430, 433 (2012) (quoting, *Moore v. Simpson*, 322 S.C. 518, 473 S.E.2d 64 (Ct.App. 1996)). While perceived agency is not recognized under South Carolina law, “apparent agency is when the **principal** knowingly permits the agent to exercise authority, or the **principal** holds the agent out as possessing such authority.” *Roberson v. Southern Finance of South Carolina, Inc.*, 365 S.C. 6, 11, 615 S.E.2d 112, 115 (2005)(emphasis added). “An apparent agency may not be established solely by the declarations and conduct of an alleged agent.” *Id.*

There is no evidence in the record to establish apparent agency. In fact, the only evidence in the record indicates that the alleged principal (Pine Hill) took affirmative steps to prevent the alleged agent (Brandon Wages or JDC Management) from exercising authority to accept service by specifically including a prohibition in their Management Agreement. There is certainly no evidence in the record that the alleged principal (again, Pine Hill) held Brandon Wages out as an agent for service of process or knowingly permitted him to exercise any authority to accept service.

The Court notes that the process server's Affidavit of Service identifies Mr. Wages as the "Property Manager" and that Pine Hill's affidavits fail to address this. This is incorrect. Both Affidavits clearly and unequivocally declare that Brandon Wages has never been a "Property Manager" of the Defendant Pine Hill. What the affidavits do state is that Brandon Wages was a maintenance technician **for the property management service** JDC Management – a separate entity and now a defendant. The process server's hearsay is unfounded, not cross-examined, unreliable, not authenticated, and ultimately irrelevant. The allegation includes no reference to Pine Hill, Brandon Wages' relationship to Pine Hill, or his authority to accept service on its behalf. As stated above, apparent agency must be found based on conduct of the principal and "cannot be established solely by the declarations and conduct of an alleged agent." *Roberson*, 365 S.C. at 11, 615 S.E.2d 112, 115. To the extent this allegation (even if accepted as true) could support service of process on its face (which it would not), it presumably relies solely on the declarations and conduct of the alleged agent – which cannot form the basis of apparent agency. Therefore, Mr. Wages lacked the appropriate agency to accept service and any reliance on the hearsay found in the affidavit of service to the contrary is unfounded.

Without any evidence in the record to support actual or apparent agency, and with specific evidence in the record to contradict actual and apparent agency, attempts to serve Pine Hill by and through Brandon Wages cannot be deemed effective.

Further, the Court states that the affidavits presented by Defendant Pine Hill in support of its Motion to Set Aside Default "do not explain what Brandon Wages did with the Summons and Complaint he was served." This is an irrelevant inquiry in determining whether service of process was effectuated. Rule 4 serves two purposes, "It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." *Roche v. Young Brothers*,

Inc. of Florence, 318 S.C. 207, 456 S.E.2d 897 (1995). Neither, the South Carolina Rules of Civil Procedure nor constitutionally determined due process provide for service of process by evidence of receipt. In fact, in *Makawi*, the court specifically found that Makawi called the Plaintiff after the attempted service in question and acknowledged receipt of the Summons and Complaint. *Graham Law Firm, P.A. v. Makawi*, 396 S.C. at 293, 721 S.E.2d 430, 432. Despite evidence of receipt, the Court still found that service of process was improper because the agents who allegedly accepted service were not imbued with the proper actual or apparent authority. *Id.* at 298.

Here, there is uncontroverted evidence that Pine Hill did not receive the Summons and Complaint. (See, Affidavit of Cheryl Ferraro, ¶15 (“In fact, following a letter from opposing counsel dated November 10, 2016 (nearly fifteen months prior to the filing of the Complaint in this matter) there is no record of Pine Hill Apartments, LP ... having received any information or documents related to this matter.”)). However, regardless of whether Pine Hill received the Summons and Complaint or not (and the only evidence in the record is that it did not), receipt alone does not and cannot constitute service of process. Neither the South Carolina Rules of Civil Procedure nor the statutory, constitutional, and case law of South Carolina permit such. The Court’s reliance on this alleged deficiency in Pine Hill’s affidavits is in error. Because service was not effective, the Court’s Order should be amended to find that the entry of default, default judgment, and the order of damages were entered in error and are void.

- 2. Pine Hill’s alleged failure to keep the address current for its Agent for Service of Process does not permit service of process by registered mail without satisfying the South Carolina Rules of Civil Procedure.**

Service of Process by certified mail can only support entry of default or default judgment when the record contains a return receipt showing the acceptance by the defendant. Rule 4(d)(8), SCRPC states:

Service pursuant to this paragraph shall not be the basis for the entry of default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person. If delivery of process is refused or is returned undelivered, service shall be made as otherwise provided in these Rules.

It is undisputed that there is no such return receipt in this record rendering Plaintiff's attempts to serve Pine Hill by certified mail of no effect in this case. The language of Rule 4 has no exception for when a party's listing with the Secretary of State is out of date. The Court is in error in attempting to hold Pine Hill's alleged failure to keep the address current against Pine Hill in the context of constitutionally demanded due process.

In fact, Rule 4(d)(8) contemplates in its very words the possibility of a party **refusing** to sign for the document. In that instance, a Plaintiff must rely on the myriad other ways to affect service provided for in the South Carolina Rules of Civil Procedure. Therefore, when such drastic action as outright refusal is contemplated in the rule, it should not and cannot be held against Pine Hill that it's listing with the secretary of state was out of date. Reliance on this fact to find service of process effective is in error and the Order should be amended to find that service of process was not effective.

3. Service of Process was ineffectual and cannot support a finding of personal jurisdiction, Entry of Default, Default, or the Order of Damages.

For all of the reasons presented in Pine Hill's motions, memoranda in support thereof, and at the hearing of this matter, the Court erred in finding that the Defendant had been properly

served. In fact, service was not effectuated because the individual who was served was not an officer, a managing or general agent, or an agent authorized by appointment or by law to receive service of process for Defendant. Further, service by certified mail cannot be the basis for the entry of default when, as here, the return receipt is not executed or otherwise accepted by the defendant. Without service of process this Court has not established personal jurisdiction over Pine Hill, the entry of default, default judgment and order of damages are void and all should be set aside. Failure to set aside is in violation of Pine Hill's constitutional due process rights.

4. The Court failed to address Pine Hill's arguments for relief under Rules 55 and 60(b) of the South Carolina Rules of Civil Procedure.

In its Motion to Set Aside, Pine Hill moved for relief based on Rules 55 and 60 of the South Carolina Rules of Civil Procedure. Those rules provide for relief from default for several enumerated reasons as set forth in Pine Hill's Motion. The Court did not address Pine Hill's arguments in its Order. This includes but is not limited to whether or not good cause exists to set aside the entry of default and the default judgment. Therefore, the Order should be amended to provide Pine Hill the relief it seeks pursuant to Rules 55 and 60. Pine Hill incorporates by reference the arguments presented in its Motion, its Memorandum in Support and the arguments presented at the hearing of this matter in support of its entitlement to relief under Rules 55 and 60 of the South Carolina Rules of Civil Procedure.

5. The Amended Complaint moots the previous complaint and renders orders on the previous Complaint null, void, and moot including the Entry of Default, Default, and Order of Damages.

Finally, subsequent to the entry of default, the damages hearing, and Pine Hill's Motion, Plaintiff voluntarily filed an Amended Complaint. Counsel for Pine Hill was served with the Amended Summons and Amended Complaint which required Pine Hill to file a responsive pleading – which it did on September 3, 2019.

“As a general rule, an amended pleading ordinarily supersedes the original and renders it of no legal effect.” *Young v. City of Mt. Rainier*, 283 F.3d 567, 572 (4th Cir., 2001) (internal quotations omitted) (quoting *Crysen/Montenay Energy Co. v. Shell Oil Co.*, 226 F.3d 160, 162 (2d Cir. 2000)). As presented in Pine Hill’s motions, memoranda in support, and at the hearing, substantial case law exists to overturn default on the filing of an amended complaint. In finding that this black letter law is not applicable in this instance to render the default moot, the Court stated “nothing in the Amended Complaint changed as to Defendant Pine Hill. Thus, in accordance with SCRCP Rule 4(d)(3) and (8), no additional service was required on Defendant Pine Hill.” This is of no import and would undermine why amended complaints are deemed to moot entries of default and default judgments.

The fact that an amended complaint renders an original complaint moot is not a mere technicality. Regardless of the purpose of the amended complaint, including if it is to only add new parties, the amendment supersedes the original complaint. In *Alfa Vision*, a group of original defendants were in default on an original complaint. *Alfa Vision Insurance Corp. v. Lopez*, 2019 WL 1150507, *2, Case No.: 5:17-CV-05201 (W.D.Ark. March 13, 2019). However, the Plaintiff amended the complaint to add “one new claim against one new defendant.” *Id.* at *1. The Court admitted that service of the amended complaint on the original, defaulted defendants was not necessary under Rule 5(a). *Id.* (“To be sure, the Rules did not require Alfa to serve the Amended Complaint on the original defendants, since the amended pleading did not assert a new claim for relief against any of them.”). The Court stated,

At first blush, it may seem overly technical to moot the Clerk's defaults as to the original complaint and require Alfa to seek Clerk's defaults as to the Amended Complaint. However, the Court finds value in maintaining this requirement, simply because one operative complaint should govern the case at all times. If the Court entered a default judgment against all Defendants, but based

the judgment in part on Clerk's orders referencing two operative pleadings, the judgment itself would acknowledge the simultaneous existence of two operative complaints. For the sake of clarity of the record and to avoid confusion to the parties, the rule must be that a Clerk's default that refers to a defunct, superseded complaint must be moot.

Id. at *2.

Courts have also specifically weighed the impact of merely adding new defendants, as Plaintiff has done in this case, in determining that an Amended Complaint supersedes the original complaint and renders default moot.

Third, while not an approved course of conduct by courts, defaulting may be a very rational course of conduct for a defendant, particularly a defendant who faces readily quantifiable damages and who lacks a meaningful defense (especially when weighed against the cost of mounting a defense). This calculation can only be knowingly made if the defendant has the readily identifiable operative pleading available to him or her. Even if an original complaint provides initial notice to the defendant of the claims against him or her, knowing what an amended complaint says about other defendants and being able to calculate their exposure may be relevant to the defaulting defendant's calculus. While such a defendant usually does not receive service under the present Federal Rules, see Fed. R. Civ. Proc. 5(a)(2), the defendant can at least check the court's docket for filed complaints and know what the operative pleading against him and the other defendants is. If we accepted Plaintiffs' rule, such certainty would be less available.

Allstate Ins. Co. v. Yadgarov, Case No. 11-CV-6187 PKC VMS, 2014 WL 860019, at *12 (E.D.N.Y. Mar. 5, 2014). The *Yadgarov* court, like the *Alfa Vision* court, found it imperative that an amended complaint supersede an original complaint even when nothing changed in the amended complaint as to defaulting defendants and service of process was not required as to the defaulting defendants. *Id.* at *8. “[S]ervice of the Amended Complaint on the Subject Defendants was not required, and the Amended Complaint therefore superseded the original Complaint on

filing, as to the Subject Defendants [currently in default]. Furthermore, as the Clerk's entries of default and Plaintiffs' motion for default judgment are premised on a Complaint that is now a legal nullity, Plaintiffs' motion is moot." Id., at *8.

Regardless of service obligations under the South Carolina Rules of Civil Procedure, the Amended Complaint is now the operative complaint in this case. It was served on Defendant Pine Hill, Pine Hill was obligated to answer it, and Pine Hill did answer it. Presumably, Defendant Pine Hill has the obligation to defend itself, participate in discovery, and the right to seek a jury trial on the dubious merits of the Amended Complaint. For all the reasons detailed herein, the reasons and law presented in Pine Hill's Motion to Set Aside, its supplemental motion to set aside, and its memorandum in support of its Motions to Set Aside (all of which are incorporated herein by reference) and those presented at the hearing of the Motion to Set Aside, the Amended Complaint is the operative complaint as to Defendant Pine Hill and the entry of judgment, default judgment, and order of damages entered on the original complaint are all legal nullities and this matter should proceed on the Amended Complaint and Pine Hill's Answer thereto. The Court's determination to the contrary is in error. This Court's Order should be amended to reflect that the filing (and service) of the Amended Complaint rendered the original complaint and the entry of default, default judgment and order of damages entered thereon nullities.

CONCLUSION

WHEREFORE, Defendant respectfully requests that this Court enter an order pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure altering or amending the judgment as detailed above including but not limited to setting aside the entry of default, default judgment, and order of damages. Pine Hill relies on the arguments presented in this Motion, any

memoranda submitted in support, and arguments presented at the hearing of this matter. This motion is based upon the pleadings, Pine Hill's previous motions, any memorandum submitted in support of the same, affidavits filed or to be filed, the Orders previously entered and filed with the Clerk of Court, applicable case and statutory law, and any such matters as the Court may deem just and proper. Counsel for Defendant certifies that consultation with Plaintiffs counsel would serve no useful purpose.

Respectfully submitted,

GALLIVAN, WHITE & BOYD, P.A.

s/ Jordan M. Crapps
Jordan Crapps (SC Bar No. 100580)
1201 Main Street, Suite 1200
Post Office Box 7368 (29202)
Columbia, SC 29201
(803) 779-1833 (Ofc)
(803) 779-1767 (Fax)
jcrapps@gwblawfirm.com

James M. Dedman, IV (SC Bar No. 70664)
6805 Morrison Blvd., Suite 200
Post Office Box 12250 (28220)
Charlotte, NC 29211
(704) 552-1712 (Ofc)
(704) 362-4850 (Fax)
jdedman@gwblawfirm.com

Attorneys for Pine Hill Apartments, LP

February 20, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

MAR 10 2020
SC Court of Appeals

Judge James B. Jackson, Jr., Master-In-Equity

Case No. 2019-CP-38-00190

Shanika Monique Void Respondent

v.

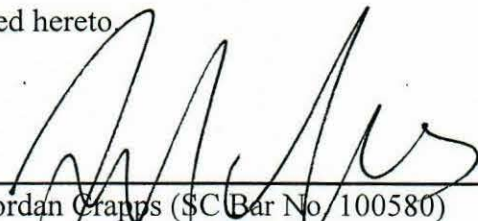
Pine Hill Apartments, L.P. and JDC Management, LLC Defendants
Of whom, Pine Hill Apartments, L.P. is Appellant

NOTICE OF APPEAL

Appellant Pine Hill Apartments, L.P. ("Pine Hill") appeals the Honorable James. B. Jackson Jr.'s Order denying Pine Hill's Motion to Set Aside Default filed February 10, 2020 and Order denying Pine Hill's Motion to Alter or Amend filed March 4, 2020. Appellant Pine Hill received notice of the Order denying Appellant's Motion to Alter or Amend on March 4, 2020.

Copies of the Lower Court's Orders are attached hereto

March 10, 2020



Jordan Crapps (SC Bar No. 100580)
Gallivan White & Boyd, PA
1201 Main Street, Suite 1200
Post Office Box 7368 (29202)
Columbia, SC 29201
(803) 779-1833 (Ofc)
(803) 779-1767 (Fax)
jcrapps@gwblawfirm.com

James M. Dedman, IV (SC Bar No. 70664)
6805 Morrison Blvd., Suite 200
Post Office Box 12250 (28220)
Charlotte, NC 29211
(704) 552-1712 (Ofc)
(704) 362-4850 (Fax)
jdedman@gwblawfirm.com

Attorneys for Pine Hill Apartments, LP

Other Counsel of Record:

Charlie H. Williams, III
David R. Williams
Virginia Watson Williams
Williams & Williams
1281 Russell Street
Orangeburg, SC 29115
Attorneys for Shanika Void

Ryan C. Holt
Sweeny Wingate & Barrow
PO Box 12129
Columbia, SC 29211
Attorney for JDC Management, LLC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
Shanika Void,)
)
)
Plaintiff,)
)
vs.)
)
Pine Hill Apartments, LP, and JDC)
Management LLC,)
)
)
)
Defendants)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2019-CP-38-00190

**ORDER DENYING
DEFENDANT PINE HILL'S
MOTION TO SET
ORDER OF DEFAULT AND THE
DAMAGES ORDER**

RECEIVED
MAR 10 2020
SC Court of Appeals

This matter came before this court on November 19, 2019. Present for Plaintiff was Virginia W. Williams. Present for Defendant Pine Hill Apartments, LP was Jordan Crapps. Based on the arguments presented at the hearing, pleadings exchanged thereto, a review of the case history, as well as substantive and procedural South Carolina law, Defendant's motion is HEREBY DENIED.

PROCEDURAL HISTORY

Plaintiff filed her original complaint on February 4, 2019. The complaint is based on a fall at Defendant Pine Hill's apartments on September 2, 2016. Plaintiff attempted service on Defendant Pine Hill via certified mail to its registered agent pursuant to the Secretary of State's website. It was returned undeliverable. Plaintiff then attempted service on Defendant Pine Hill by personally serving Brandon Wages, at 117 Yellow Jasmine Road, Orangeburg, SC, which is the location of the apartment complex. He was served on February 28, 2019. No answer or appearance was made within thirty (30) days of personal service.

An order of default was entered on May 7, 2019. Defendant Pine Hill was properly notified of the damages hearing set for June 20, 2019. Defendant Pine Hill, nor anyone on its behalf, appeared at the hearing. A damages order was entered by this court on July 8, 2019. Defendant Pine Hill then filed three motions to contest this order on July 18, 2019; (1) Motion to Set Aside Order of Default and Damages Order, (2) Emergency Motion to Stay Enforcement of the Judgment, and (3) Motion to Alter or Amend the Damages Order. Pine Hill's motion to Set Aside Default and Order of damages was set before this court on November 19, 2019.

ANALYSIS

Defendant Pine Hill argued service on Brandon Wages was improper because he was not employed by Defendant Pine Hill and he was not authorized to accept service on behalf of Defendant Pine Hill. In affidavits presented to the court, Defendant Pine Hill asserted that Brandon Wages was employed as a manger by JDC Management LLC, who was responsible for managing Defendant Pine Hill's apartment complex.

In reviewing this argument, the court considered the information Defendant Pine Hill maintained with the South Carolina Secretary of State's website. Plaintiff presented to the court Defendant Pine Hill's registered agent name and address according to this website. It is indeed the agent and address that Plaintiff attempted to serve by certified restricted delivery mail, which, as indicated in Plaintiff's affidavit of default and the affidavit of nonservice, was returned undeliverable.

When Plaintiff amended her complaint to add Defendant JDC Management LLC, she served a registered agent with a similar name at a different address. Service was perfected in this manner against Defendant JDC. In the affidavits Defendant Pine Hill presented in support of its motions, it is clear the registered agent for Defendant Pine Hill is the same as that for Defendant

JDC Management. This court finds that Defendant Pine Hill failed to keep the address current of its agent for Service of Process with the Secretary of State. Had they done so, none of this would be a problem yet now Defendant Pine Hill seeks to be relieved from default which is a problem of their own creation.

The court further considered the argument that Brandon Wages was not Defendant Pine Hill's manager or even their employee. However, the affidavits presented by Defendant Pine Hill in support of its motions do not explain what Brandon Wages did with the Summons and Complaint he was served. These affidavits also fail to address the process server's Affidavit of Service which indicates Brandon Wages was the manager of this defendant.

Furthermore, per the affidavits and arguments presented by Defendant Pine Hill, the new defendant, JDC Management, LLC seems to have a very close relationship with Defendant Pine Hill. JDC manages the property owned by this Defendant and both have the same agent for Service of Process, although JDC provided the Secretary of State with a new, corrected address. Therefore, Brandon Wages could be perceived to be an agent of Defendant Pine Hill.

Finally, Defendant Pine Hill argues that Plaintiff amended her complaint to add Defendant JDC Management LLC, thus rendering the initial complaint null and void for purposes of service and the default. However, nothing in the Amended Complaint changed as to Defendant Pine Hill. Thus, in accordance with SCRCP Rule 4(d)(3) and (8), no additional service was required on Defendant Pine Hill. The Amended Complaint was filed well after default was entered. Defendant Pine Hill is not excused from answering the initial complaint because an amended complaint was filed. See Colleton Prep v. Hoover Universal, 2004 WL 7332779 (distinguishing Varnes v. Glass Bottle Blowers Ass'n, 674 F.2d 1365 (11th Cir. 1982) (granting Plaintiff's motion to strike

defendant's answer to an amended complaint on the basis that the defendant was properly served and held in default on the original complaint).

CONCLUSION

Based on the South Carolina Rules of Civil Procedure and the subsequent case law, Defendant Pine Hill's Motion to Set Aside Default and Damages order is **HEREBY DENIED**.

Orangeburg, SC

Date: _____, 2020

The Honorable James B. Jackson
First Judicial Circuit – Master in Equity



Orangeburg Common Pleas

Case Caption: Shanika Monique Void VS Pine Hill Apartments Lp
Case Number: 2019CP3800190
Type: Order/Set Aside Judgment

So Ordered

James B. Jackson, Jr. 3077 Master in Equity

Electronically signed on 2020-02-10 10:16:13 page 5 of 5

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Orangeburg
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2019CP3800190

Shanika Monique Void
PLAINTIFF(S)

Pine Hill Apartments Lp et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other Motion to Alter or Amend denied
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Defendant's Motion to Alter or Amend is denied. Defendant presents no arguments not previously considered by the Court

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/04/2020 .

RECEIVED

MAR 10 2020

SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Orangeburg Common Pleas

Case Caption: Shanika Monique Void VS Pine Hill Apartments Lp
Case Number: 2019CP3800190
Type: Order/Electronic Form 4

So Ordered

James B. Jackson, Jr. 3077 Master in Equity

Electronically signed on 2020-03-04 13:55:03 page 3 of 3

ELECTRONICALLY FILED - 2020 Mar 04 2:00 PM - ORANGEBURG - COMMON PLEAS - CASE#2019CP3800190

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Judge James B. Jackson, Jr., Master-In-Equity

Case No. 2019-CP-38-00190

RECEIVED
MAR 10 2020
SC Court of Appeals

Shanika Monique Void Respondent

v.

Pine Hill Apartments, L.P. and JDC Management, LLC Defendants
Of whom, Pine Hill Apartments, L.P. is Appellant

PROOF OF SERVICE

I, the undersigned employee of Gallivan, White & Boyd, P.A., do hereby certify that I have caused the below referenced to be served via U.S. mail, postage prepaid, *or by other delivery as indicated*, to all parties of record at the address(es) shown below.

1. Notice of Appeal
2. Proof of Service of the Notice of Appeal served on Respondents, Orangeburg County Clerk of Court, and The Honorable James B. Jackson, Jr.;
3. Copy of the Order to be challenged on appeal, which was signed by The Honorable James B. Jackson, Jr., dated February 10, 2020, filed February 10, 2020, and received in our office on February 10, 2020;
4. Copy of the Order to be challenged on appeal, which was signed by The Honorable James B. Jackson, Jr., dated March 4, 2020, filed March 4, 2020, and received in our office on March 4, 2020; and
5. A check in the amount of \$250.00 for the filing fee.

Parties of Record

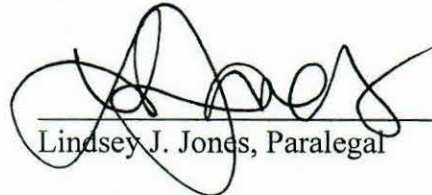
The Honorable James B. Jackson, Jr.
Post Office Box 9000
Orangeburg, SC 29116
(by U.S. Mail)

The Honorable Winnifa Brown-Clark
Orangeburg County Clerk of Court
(by electronic filing)

Charlie H. Williams, III
David R. Williams
Virginia Watson Williams
1281 Russell Street
Orangeburg, SC 29115
Attorney for Shanika Void
(by U.S. mail)

The Honorable Jenny Abbott Kitchings
SC Court of Appeals
1015 Sumter Street
Columbia, SC 29211
(by hand delivery)

Ryan Holt
PO Box 12129
Columbia, SC 29211
Attorney for JDC Management, LLC
(by U.S. mail)



Lindsey J. Jones, Paralegal

March 10, 2020



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

HEARING PROCEEDINGS

June 20, 2019

Shanika Void

VS

Pine Hill Apartments, LP

2019-CP-38-00190

REPORTER: Barbara Ham

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF ORANGEBURG) CASE NO.: 2019-CP-38-00190

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Shanika Void,)
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Plaintiff,)
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vs.)
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Pine Hill Apartments, LP,)
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Defendant.)
_____)

HEARING
JUNE 20, 2019

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APPEARANCES :

REPRESENTING THE PLAINTIFF:

CHARLIE H. WILLIAMS, III, ESQUIRE
Williams & Williams
1281 Russell Street
Orangeburg, South Carolina 29115
(Charlie@williamsattys.com)

REPRESENTING THE DEFENDANT:

JORDAN M. CRAPPS, ESQUIRE
Gallivan White & Boyd, PA
1201 Main Street
Columbia, South Carolina 29201
(Jcrapps@gwblawfirm.com)

1 THE COURT: We're now on the record in the matter of
2 Shanika Monique Void, Plaintiff, vs. Pine Hill
3 Apartments LP, Defendants, Case Number 2019-CP-
4 38-190. Plaintiff is present represented by her
5 attorney, Charlie Williams, and the Defendants
6 have not -- are not present. I assume they've
7 been notified. Mr. Williams, you obviously
8 notified them?

9 MR. WILLIAMS: Yes, sir. We sent notice to both the
10 registered agent which we -- there's evidence of
11 non-service in the file for her as well as the
12 property manager, who was personally served on
13 February 28th. We sent notice to his address as
14 well.

15 THE COURT: Who's the registered agent?

16 MR. WILLIAMS: Cheryl Finch for Pine Hill Apartments,
17 and we attempted to serve her several times there
18 and were unable to perfect service. It kept
19 getting returned so we personally served the
20 Property Manager, Mr. Brandon Wages.

21 THE COURT: Okay. So this is a default matter, they
22 are in default. Is that correct?

23 MR. WILLIAMS: That's correct, Your Honor. There
24 should be an Affidavit of Default. It looks like
25 it was filed on May the 2nd of 2019. It looks

1 like the Order of Default was electronically sent
2 on May the 7th of 2019 by Judge Edgar Dickson.

3 THE COURT: Okay. All right. I'm ready to proceed.

4 You can call your first witness.

5 MR. WILLIAMS: Thank you, Judge. At this time, we
6 would call the Plaintiff, Ms. Shanika Void.

7 THE COURT: Ms. Void, if you will raise your right
8 hand for me?

9 (Ms. Shanika Void is sworn in)

10 THE COURT: She's your witness.

11 MR. WILLIAMS: Thank you, Judge. I believe it is
12 already a matter of the record, but just -- I
13 would ask that you take judicial notice that
14 Defendant Pine Hill Apartments were personally
15 served as evidenced by the file and notice of
16 this hearing was mailed via first class mail to
17 the addresses of both the Registered Agent as
18 well as the Property Manager, Brandon Wages. If
19 Your Honor feels it necessary, I would ask that
20 you have staff call for the Defendant three times
21 and make certain they're not present.

22 THE COURT: Okay. There's nobody out there, you
23 looked?

24 MS. ????: I will double check. Just Highway
25 Patrolmans.

1 THE COURT: There's nobody present. I'll take notice
2 of that fact. I'll take notice of all the
3 matters as set forth in the file. Your witness.
4 MR. WILLIAMS: Thank you, Judge. Ms. Void, please
5 state your full name for the record and spell
6 your last name.
7 MS. VOID: Shanika Monique Void. That's with a V, as
8 in victory, O-I-D.
9 MR. WILLIAMS: Thank you. What -- what is your age?
10 MS. VOID: Thirty-one.
11 MR. WILLIAMS: What is your date of birth?
12 MS. VOID: [REDACTED].
13 MR. WILLIAMS: All right. Are you married?
14 MS. VOID: No, sir, I'm single.
15 MR. WILLIAMS: Okay. Do you have any children?
16 MS. VOID: All right. No, sir.
17 MR. WILLIAMS: What's your address?
18 MS. VOID: It's 255 [unintelligible] Orangeburg,
19 South Carolina 29115.
20 MR. WILLIAMS: All right. How far did you go in
21 school?
22 MS. VOID: I graduated and I went to Denmark
23 Technical College for probably two years off and
24 on.
25 MR. WILLIAMS: Okay. Did you get any certificates or

1 degrees from Denmark Tech?

2 MS. VOID: No, sir.

3 MR. WILLIAMS: Okay. What is your -- are you
4 currently working?

5 MS. VOID: Yes, sir.

6 MR. WILLIAMS: Where are you working?

7 MS. VOID: I work at Allied Air Enterprise. That's
8 in Orangeburg, 255 Millenium Drive. I'm a CNC
9 Machine Operator.

10 MR. WILLIAMS: How long have you been employed at
11 Allied Air?

12 MS. VOID: I was there for five years, but I went
13 back on May of last year, that would be a year.

14 MR. WILLIAMS: Okay. So on and off for six years.

15 MS. VOID: Yes, sir.

16 MR. WILLIAMS: All right. Prior to working at Allied
17 Air or either during the break, during the time
18 you were there, where else have you worked?

19 MS. VOID: I worked at Husqvarna. I worked at Koyo.
20 I mostly did production work all my life as a CNC
21 machine operator.

22 MR. WILLIAMS: Okay. And now do you get those jobs
23 or are you also employed by, like, a temp
24 service?

25 MS. VOID: Yes, I have been employed by a temp

1 service and temp-to-hire.

2 MR. WILLIAMS: Okay. And was that placement point
3 called Gerber?

4 MS. VOID: Gerber was a temp service. Yes, sir.

5 MR. WILLIAMS: Okay.

6 MS. VOID: Through a temp service.

7 MR. WILLIAMS: All right. Do you recall being in an
8 accident at Pine Hill Apartments?

9 MS. VOID: Yes, sir.

10 MR. WILLIAMS: All right. Do you recall the date of
11 that accident?

12 MS. VOID: It was I want to say in 2016. I can't
13 remember exactly what date, but it was in 2016.

14 MR. WILLIAMS: Does September the 2nd of 2016 sound
15 accurate?

16 MS. VOID: Yes, sir.

17 MR. WILLIAMS: Okay. And now, Pine Hill Apartments,
18 is that in Orangeburg County?

19 MS. VOID: Yes, sir.

20 MR. WILLIAMS: Okay. Tell us what happened in that
21 accident.

22 MS. VOID: Actually, it was around about, I want to
23 say around about almost 7:00 o'clock that
24 morning. That year we had a flood -- like a
25 flood with rain constantly and I was on my way to

1 get a better job in Summerville and as I was
2 going down the steps, I could see the water
3 because the water on the steps is like the paint
4 on the step is not water based paint and, you
5 know, so I'm used to seeing this water on the
6 steps and how cautious should I go down the steps
7 but it was too much water, I guess, on the steps
8 so I'm holding onto the railing at the same time,
9 but the railing is like -- it's no good. So as
10 I'm going down trying to take my first step the
11 only thing I knew was me going straight on down
12 from the third floor to the second floor. As I'm
13 going down the only thing I could do was think of
14 safety first and that was holding my head up and
15 I hold my head up and just let my body just slide
16 on down. I slide down and I stopped at the
17 second floor on the last step and I heard
18 something like snap and when it snapped, I
19 immediately was like to blank out but the only
20 thing that kept me going was the water and the
21 air so I hurried up and dialed 911. I tried to
22 get up and when I tried to proceed to get up I
23 fell right back down because my achilles had done
24 snapped. And the EMS they came up and they
25 asked, you know, they yelled, you know, where I

1 was at and I told them on the second floor and
2 they came and they got me and they put me on this
3 little stretcher thing that they got. It was,
4 like, a robot-type stretcher they have now for,
5 you know, floor's like that and they took me on
6 down. But that's basically what happened.

7 MR. WILLIAMS: Okay. So, it was -- you were coming
8 down a set of stairs at Pine Hill Apartments.

9 MS. VOID: Right.

10 MR. WILLIAMS: The stairs did not have any kind of
11 friction tape or anything.

12 MS. VOID: They didn't have no grip strips or
13 nothing.

14 MR. WILLIAMS: Okay. And so you slipped on the
15 second step and fell all the way to the bottom.

16 MS. VOID: All the way to the bottom. And it's, like
17 -- I want to say it's, like, 18 steps.

18 MR. WILLIAMS: Okay. Were you injured?

19 MS. VOID: Yes, sir.

20 MR. WILLIAMS: All right. Specifically, what were
21 your initial complaints?

22 MS. VOID: My ankle. I couldn't feel my toes. Like,
23 I had no feeling in the top of my toes. I had to
24 walk on a cane. I just -- I couldn't -- my foot
25 was so swollen like I couldn't do nothing for

1 myself. I had to get my mom to come and help me,
2 and it's still like that to this day. I can't do
3 really nothing without being in pain, you know.
4 I can't be a girly-girl no more. I can't wear
5 heels no more. So I can't -- certain shoes I
6 can't wear no more. It's just uncomfortable. I
7 just -- I don't feel normal.

8 MR. WILLIAMS: All right. Do you still struggle with
9 that pain today as you sit here?

10 MS. VOID: I still struggle with that pain. I also
11 gained weight by sitting at home, you know, I
12 can't do nothing. I usually go to the gym and
13 walk around the track. I can't -- those things I
14 can't do no more. I just -- it hurts, you know.

15 MR. WILLIAMS: Let's talk about your treatment.
16 Well, first of all, the pain that you said that
17 still continues today, do you have any reason to
18 believe that that will ever subside?

19 MS. VOID: No. I will never think that I would ever
20 be the same again.

21 MR. WILLIAMS: Okay. So you believe that that injury
22 is permanent?

23 MS. VOID: It's permanent.

24 MR. WILLIAMS: Okay. All right. Kind of back
25 tracking a little bit, we haven't really talked

1 about it. But on the day of the accident, were
2 you treated at Orangeburg Regional Medical Center
3 or TRMC?

4 MS. VOID: Yes, sir.

5 MR. WILLIAMS: Okay. And that was the same day as
6 the accident; correct?

7 MS. VOID: Yes, sir.

8 MR. WILLIAMS: Were you also transported by ambulance
9 there?

10 MS. VOID: Yes, sir.

11 MR. WILLIAMS: Okay. Do you recall any treatment
12 subsequent to ER treatment at the Medical -- at
13 the Regional Medical Center.

14 MS. VOID: Yes, sir. I had to go to -- I had to go
15 to Urgent Care, and they gave me Ibuprofen and
16 some other pain medicine. I also had to -- if it
17 gets too bad they had to give me shots in my hip.

18 MR. WILLIAMS: Okay. And you said Urgent Care.

19 Would Family Health Center sound --

20 MS. VOID: Yes, sir.

21 MR. WILLIAMS: -- more appropriate?

22 MS. VOID: Yes, sir.

23 MR. WILLIAMS: All right. And they treat you with
24 you said some injections?

25 MS. VOID: Yes, sir. In my hip.

1 MR. WILLIAMS: All right. When was the last
2 injection you had?

3 MS. VOID: It was -- I want to say about two months
4 ago. But the last injection I had was put in my
5 ankle on Tuesday by Dr. Padgett.

6 MR. WILLIAMS: Okay. All right. So, in addition to
7 going to Family Health Center and being treated,
8 you're treating with Dr. Dale Padgett at Padgett
9 Medical Center?

10 MS. VOID: Yes, sir.

11 MR. WILLIAMS: Okay. And is he your family doctor
12 that's been following you?

13 MS. VOID: Yes, sir, right now. Yes, sir.

14 MR. WILLIAMS: All right. Did you also have to do
15 some physical therapy?

16 MS. VOID: Yes, sir.

17 MR. WILLIAMS: Do you recall where you did physical
18 therapy?

19 MS. VOID: Yes, sir. I can't remember his name --

20 MR. WILLIAMS: Does Duckett --

21 MS. VOID: -- Duckett. Yes, sir.

22 MR. WILLIAMS: -- sound familiar?

23 MS. VOID: Yes, sir.

24 MR. WILLIAMS: All right. And at each of these
25 places you were billed for the services they

1 rendered to you; correct?

2 MS. VOID: Yes, sir.

3 MR. WILLIAMS: All right. And you received treatment
4 at all of these places; correct?

5 MS. VOID: Yes, sir.

6 MR. WILLIAMS: Your Honor, may I approach the
7 witness?

8 THE COURT: Absolutely.

9 MR. WILLIAMS: Ms. Void, I'm going to show you --
10 first I'm going to ask you to look at the second
11 page. Do you recognize any of these bills and
12 records from your medical providers?

13 MS. VOID: Yes, sir.

14 MR. WILLIAMS: All right. Is the first page an
15 accurate summary of the bills to date from your
16 medical providers?

17 MS. VOID: Yes, sir.

18 MR. WILLIAMS: Okay. And that is at this time
19 \$6,021.56?

20 MS. VOID: Yes, sir.

21 MR. WILLIAMS: All right. Judge, I also, excuse me,
22 Ms. Void, at the time of this accident you were
23 29-years-old?

24 MS. VOID: Yes, sir.

25 MR. WILLIAMS: And as we sit here today you're 31?

1 MS. VOID: Yes, sir.

2 MR. WILLIAMS: Judge, I would ask that you take
3 judicial notice of Ms. Void's age at the time of
4 the accident, 29-years-old and under Code 19-1-
5 150, her life expectancy would be 52.53 years at
6 the time of the accident. I'd also ask you to
7 take judicial notice of Ms. Void's current age
8 which is 31 and under the same code, her life
9 expectancy as we sit here today would be 49.56
10 years.

11 THE COURT: I'll take judicial notice of this.

12 MR. WILLIAMS: Okay. In addition to having to expend
13 monies for medical treatment, did you miss time
14 from work?

15 MS. VOID: Yes, sir. I have been -- this accident
16 first has been -- I didn't know -- I'm glad that
17 I did have money put aside because other than
18 that, I didn't know where I was going to get, you
19 know, rent from or car payment. I lost a lot. I
20 ended up getting my car repossessed, you know,
21 and I had tried to call you guys to help and I
22 just had a rough experience from that, because
23 I'm used to working on my own. I was working
24 since I was 16, and I used to go and get my own
25 money but even now, you know, that the doctor has

1 put me out of work. It's going to be rough.
2 It's going to be rough and hard and I just don't
3 know.

4 MR. WILLIAMS: Okay. As part of your time missed
5 from work and we know that it's affected you very
6 much but specifically as your hours, while you
7 were employed part time for Gerber, which is a
8 temp service, located in Goose Creek, is it
9 accurate that you missed work from September the
10 6th of 2016 to September the 16th of 2016?

11 MS. VOID: Yes, sir.

12 MR. WILLIAMS: Okay. And at that time, you were
13 making, is it \$9.25 per hour?

14 MS. VOID: Yes, sir.

15 MR. WILLIAMS: And I have that your HR listed as
16 total hours missed at 50 hours. Does that sound
17 right?

18 MS. VOID: Yes, sir.

19 MR. WILLIAMS: So, according to my calculations,
20 that's \$462.50 of lost wages from Gerber?

21 MS. VOID: Yes, sir.

22 MR. WILLIAMS: All right. In addition, you were out
23 of work at Allied Air during this time, too,
24 weren't you?

25 MS. VOID: Yes, sir.

1 MR. WILLIAMS: And you were out of work there for
2 three weeks?

3 MS. VOID: Yes, sir.

4 MR. WILLIAMS: And it's my understanding you were
5 making \$15.60 per hour?

6 MS. VOID: Yes, sir.

7 MR. WILLIAMS: Okay. And you work a 48-hour week?

8 MS. VOID: Yes, sir.

9 MR. WILLIAMS: So missing three weeks that would have
10 been a total 144 hours; correct?

11 MS. VOID: Yes, sir.

12 MR. WILLIAMS: And at \$15.60 an hour, that would be
13 lost wages of \$2,246.40. Is that correct?

14 MS. VOID: Yes, sir.

15 MR. WILLIAMS: Okay. Are you asking to be -- you
16 also to be compensated for your lost wages?

17 MS. VOID: Yes, sir.

18 MR. WILLIAMS: I think you've covered this, but just
19 in case, when you arrived at the hospital on the
20 day of the accident you were in excruciating pain
21 and you were complaining of right leg, your ankle
22 and your foot. Is that right?

23 MS. VOID: Yes, sir.

24 MR. WILLIAMS: And what did the ER doctor do for you?

25 MS. VOID: He gave me -- they gave me a shot, and

1 they took x-rays and they also wrapped it in an
2 ACE band. And they told me what to do at home
3 like ice packs and stuff like that. They gave me
4 -- I had to walk on crutches. I had to learn how
5 to walk on crutches, and he told me that I had to
6 follow up with primary care.

7 MR. WILLIAMS: Right. And that's Dr. Dale Padgett.
8 And you did that of course; right?

9 MS. VOID: Yes, sir.

10 MR. WILLIAMS: Okay. And I know you've talked about
11 it a lot but just in specifics at this time.
12 Tell me how the pain has affected your life.

13 MS. VOID: From me losing a lot. From me having to
14 go stay with my mom. Job-wise, me sitting at
15 home, gaining weight. I can't exercise like I
16 want to. I can't wear high heels no more. I
17 can't be a girly-girl. It's just painful. I
18 can't, you know, run around with my niece
19 anymore. I just got to sit there and watch her
20 do what a little child do. I've always been in
21 her life and now I can't do those type of things.
22 And when we go like places, like Carowinds or
23 something like that, I can't walk a certain
24 amount of time. I have to sit down and wait
25 because my foot will end up swelling up. Certain

1 type of shoes I have to wear sometimes. I have
2 to wear sneakers. Sometimes I can't wear
3 sneakers, because my foot swell up just that bad.
4 When it swells up it ends up getting the little
5 blood vessels will pop under it and you could see
6 the redness under it. It's just -- it's
7 aggravating. I have to sit home with ice packs
8 on my foot until it gets well. It very
9 aggravating. I have to put a pillow under my leg
10 -- my foot so it can elevate and get back right.
11 It's rough, it's rough. And by Tuesday when I
12 got the injection, I didn't go to sleep until
13 4:00 o'clock that morning because I was in so
14 much pain. I called my mom crying, I was like,
15 mom, I can't take this pain. Like, this ain't
16 normal. It's taking me back to when I first
17 fell.

18 MR. WILLIAMS: Right. And -- and I know we covered
19 this as well, but you do believe those injuries
20 are permanent; correct?

21 MS. VOID: Yes.

22 MR. WILLIAMS: Okay. I appreciate -- Ms. Void, let
23 me ask you one more question, we talked about the
24 medical summary that you've got there in your
25 hand. The total medical summary you have to date

1 is \$6,021.56 --

2 MS. VOID: Uh-huh (affirmative response).

3 MR. WILLIAMS: -- or at least what we have in our
4 file at this time; correct?

5 MS. VOID: Uh-huh (affirmative response). Yes, sir.

6 MR. WILLIAMS: And then you had a total lost wages of
7 \$2,708.90. Which is combined lost wages from
8 Gerber and Allied Air?

9 MS. VOID: Yes, sir.

10 MR. WILLIAMS: All right. So that brings your total
11 damages at this time up to \$8,730.46 aside from
12 pain and suffering and emotional distress?

13 MS. VOID: Yes, sir.

14 MR. WILLIAMS: All right. I appreciate your
15 testimony. Judge, I would ask at this time that
16 you consider the evidence of injuries, the
17 permanency, the future pain and suffering,
18 potential future medical expenses as well as Ms.
19 Void's life expectancy especially considering her
20 changes in her daily living activities. We're
21 going to ask that this court please compensate
22 her for these damages and award punitive damages
23 to further deter any violation such as this in
24 our State.

25 THE COURT: Are you going to offer the medical bills

1 into evidence?

2 MR. WILLIAMS: I will. I apologize, Judge. Judge,
3 at this time, I would ask that the summation of
4 medical bills as well as a true and accurate
5 reflection of her treatment and billing be
6 submitted in as Plaintiff's Exhibit #1.

7 (PLAINTIFF'S EXHIBIT #1 - Medical Bills)

8 THE COURT: Let me ask Ms. Void a couple of
9 questions. Were you living at the apartment
10 complex at that time?

11 MS. VOID: Yes, sir.

12 THE COURT: All right. So you were living on the
13 third floor, I take it?

14 MS. VOID: Yes, sir.

15 THE COURT: All right. So you were up and down these
16 stairs quite a bit?

17 MS. VOID: Yes, sir.

18 THE COURT: Now, on the day of the accident, it was
19 raining?

20 MS. VOID: Yes, sir.

21 THE COURT: And it had been raining?

22 MS. VOID: Yes, sir.

23 THE COURT: So, what exactly caused -- I mean what
24 exactly happened to cause you to slip?

25 MS. VOID: The paint. They have paint on these --

1 they are board steps and they have paint on it,
2 but it's not water base paint. And they're
3 supposed to have grip strips down to keep from,
4 you know, anybody slip and falling. And I talked
5 to one of the ladies at Pine Hill and she said
6 she tried getting in contact with corporate
7 several times, because they had had someone to
8 fall down these steps before and to put the grip
9 strips down, but nobody would never fix nothing
10 at this apartment complex.

11 THE COURT: So it was the paint that caused it to be
12 slick? Is that correct?

13 MS. VOID: Yes, sir. The paint and the water.

14 THE COURT: You fell basically at the top of the
15 steps all the way down to the landing.

16 MS. VOID: Yes, sir.

17 THE COURT: Okay. And the other thing that I didn't
18 understand you talked about your foot being a
19 problem but yet they injected you in your hip.

20 MS. VOID: Yeah.

21 THE COURT: Why did they do that?

22 MS. VOID: It's pain medicine -- it's some type of
23 pain medicine that they give you in your hip and
24 it stops the pain.

25 THE COURT: It's supposed to travel down to your

1 foot?

2 MS. VOID: Yes, sir.

3 MR. WILLIAMS: And, Judge, if I may interject and
4 just clarify. She had hip injections for pain
5 medication, but she also received ankle injection
6 more like steroid and non-cortisone.

7 THE COURT: She said that and I understood that. I
8 was a little confused about why they would put a
9 shot in the hip, I mean there's a lot I don't
10 understand, for your foot, you know. But that's
11 what they were doing.

12 MS. VOID: Yes, sir.

13 THE COURT: To help your foot but they put it in your
14 hip.

15 MS. VOID: Hip, yes, sir.

16 THE COURT: Okay. That's all I have. Thank you very
17 much. You can step down. If you'll submit me an
18 Order I'll be glad to sign it.

19 MR. WILLIAMS: Yes, sir. I'll be happy to do it.
20 Thank you, Judge.

21 THE COURT: Okay. You haven't heard anything from
22 these people, from the apartment complex?

23 MR. WILLIAMS: Yeah, Ginny. Like I said, I got
24 handed this case this morning but according to
25 David's paralegal, they've spoken with Brandon

1 Wages. Brandon Wages, the property manager, but,
2 you know, it's kind of hard when they won't
3 change their registered agent with the Secretary
4 of State and we can't find anybody that's -- you
5 know, they're supposed to keep their addresses
6 updated.

7 (End of Recording.)

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF LEXINGTON)

I, Barbara S. Ham, Notary Public in and for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Hearing Transcript of the proceedings had in the hearing of the captioned case in Orangeburg County, South Carolina, on the 20th day of June, 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 17, 2020

Barbara S. Ham

Barbara S. Ham
Notary Public for South Carolina
My Commission Expires: 04/13/2026



1226 Pickens Street
Columbia, South Carolina 29201
info@garberreporting.com
Telephone: (803) 256-4500 | Fax (803) 256-1999

HEARING PROCEEDINGS

November 19, 2019

Shanika Void

VS

Pine Hill Apartments, LP

2019-CP-38-00190

REPORTER: Barbara Ham

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF ORANGEBURG) CASE NO.: 2019-CP-38-00190

3

4 Shanika Void,)

5)

6 Plaintiff,)

7)

8 vs.)

HEARING

9)

NOVEMBER 19, 2019

10 Pine Hill Apartments, LP,)

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12 Defendant.)

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APPEARANCES :

REPRESENTING THE PLAINTIFF:

VIRGINIA WATSON WILLIAMS, ESQUIRE
Williams & Williams
1281 Russell Street
Orangeburg, South Carolina 29115
(Charlie@williamsattys.com)

REPRESENTING THE DEFENDANT:

JORDAN M. CRAPPS, ESQUIRE
Gallivan White & Boyd, PA
1201 Main Street
Columbia, South Carolina 29201
(Jcrapps@gwblawfirm.com)

1 THE COURT: We're now on the record in the matter of
2 Shanika Void, Plaintiff vs. Pine Hill Apartments,
3 LP, and JDC Management, LLC. The case number is
4 2019-CP-38-190. The Plaintiff is present and
5 represented by her attorney Ginny Williams and
6 Mr. Jordan Crapps, you're here representing for
7 the purpose of this Motion, Pine Hill Apartments.
8 Is that correct?

9 MR. CRAPPS: That's all who we represent. JDC has
10 separate from counsel.

11 THE COURT: Okay. All right. So, Mr. Jordan Crapps
12 representing Pine Hill Apartments, LP. Mr.
13 Crapps, I understand this is your Motion to Set
14 Aside Default and to be relieved from the default
15 and Order of damages. Is that correct?

16 MR. CRAPPS: That's correct, Your Honor.

17 THE COURT: So I'll be glad to hear from you.

18 MR. CRAPPS: Sure. Thank you. And we actually have
19 the Motion and we filed a Supplemental Motion
20 based on the Plaintiff's filing of an Amended
21 Complaint and we filed a Memorandum in Support
22 yesterday so I'm happy to pass up and get you
23 copies --

24 THE COURT: Yeah, why don't you give me copies of
25 them. I think I've got all that here. I know I

1 got your original Memorandum.

2 MR. CRAPPS: Here's our initial Motion on the top and
3 Supplement to that Motion second and then the
4 Memorandum in Support is third.

5 THE COURT: All right. Good. Thank you.

6 MR. CRAPPS: Thank you, Your Honor. Just a little
7 bit of background of the case. This Complaint
8 was filed in February of 2019. Afterwards -- the
9 crux of the matter is, as you may remember, a
10 slip and fall at the Pine Hill Apartments. Those
11 apartments are owned by my client, Pine Hill
12 Apartments, LP, and they are managed by a
13 separate company, JDC Management Company. The
14 Plaintiffs attempted to serve that Complaint by
15 certified mail which was returned to them as
16 undeliverable. Not -- return to sender, not
17 know, unable to forward. The Plaintiff
18 subsequently attempted personal service and
19 according to their Affidavit of Service that was
20 done on Brandon Wages, who as I'll describe in a
21 little bit, was an employee of JDC Management and
22 not an employee of my client. On May 7th there
23 was an Entry of Default and May 24th this was
24 referred to Your Honor and on June 20th of this
25 year there was a damages hearing and my client,

1 Pine Hill, was not notified of that and did not
2 appear. An Order on the damages was issued on
3 July 8th awarding \$250,000.00 dollars on about
4 \$6,000.00 worth of medical bills and \$2,700.00 of
5 lost wages and then ten days after that Order, my
6 client filed these motions. And subsequent to
7 those motions, the Plaintiff filed an Amended
8 Complaint on August 19th which, as I'll talk
9 about, supercedes that original Complaint. We
10 have answered that Complaint within 15 days and
11 that is still pending.

12 THE COURT: And that just added your additional
13 Defendant. Is that correct?

14 MR. CRAPPS: Right. I added JDC --

15 THE COURT: Right.

16 MR. CRAPPS: -- and the allegations concerning JDC,
17 right.

18 THE COURT: Okay.

19 MR. CRAPPS: So, Your Honor, as you know, I'm here on
20 my Motion to Set Aside that Default and I know
21 that that is within your discretion to do so and
22 South Carolina law prefers a disposition on the
23 merits of the case as opposed to technicalities.
24 Really, two primary arguments here. First, that
25 Amended Complaint supercedes the original one.

1 There's a case law I cite in my memo from all
2 around the country that supports that Motion.
3 That once an Amended Complaint was filed it
4 renders the original one a nullity and have no
5 legal affect and once that Amended Complaint
6 comes after the pleading, enters a default
7 thereon or motions for default judgment or
8 default judgment are all null and void and those
9 motions should be denied and default should be
10 set aside. So, primarily we argue that that
11 Amended Complaint supercedes the original one.
12 We've answered it and there is no default and
13 certainly there can be no prejudice to the
14 Plaintiff for letting us litigate the Amended
15 Complaint which they voluntarily amended. We've
16 answered. There's going to be litigation moving
17 forward anyway with the new Defendant so there's
18 no prejudice to Plaintiff to let us proceed and
19 litigate that case. Secondly, Your Honor, and
20 equally as important, we were never served this
21 original Complaint. As I noted above, they
22 attempted to serve in two different manners, one
23 was to serve by mailing that was not signed by
24 the Defendant, it was not signed by anyone and --
25 and as you know certified mail cannot be the

1 basis for default unless it is signed by the
2 Defendant. So that --

3 THE COURT: All right. Tell me who the certified
4 mail went to?

5 MR. CRAPPS: Sure. As I understand it, Ginny can
6 talk more about it, but they attempted to serve
7 it pursuant to the address on the Secretary of
8 State and to Cheryl -- her last name now is
9 Ferraro.

10 THE COURT: All right. I saw her affidavit. All
11 right. So that's what you're talking about?

12 MR. CRAPPS: That's the certified mail and it was not
13 signed.

14 THE COURT: Her name was on the documents at the
15 Secretary of State's office. Is that correct?

16 MR. CRAPPS: She was listed as the agent for service
17 process.

18 THE COURT: And that was the address listed?

19 MR. CRAPPS: That's correct. That's correct.

20 THE COURT: So it was mailed to that address and
21 returned.

22 MR. CRAPPS: That's correct.

23 THE COURT: All right. So, that concerns me a little
24 bit that your client wasn't keeping up with stuff
25 they're supposed to keep up with at the Secretary

1 of State's office.

2 MR. CRAPPS: I understand. I understand. But, Your
3 Honor, the rule is clear that that can't be the
4 basis for default unless it -- unless it is
5 signed. So the Plaintiffs then attempted to
6 serve the Complaint personally.

7 THE COURT: Right.

8 MR. CRAPPS: They went to the property, served a
9 gentleman by the name of Brandon Wages.

10 THE COURT: Right. I read his affidavit.

11 MR. CRAPPS: Okay, perfect. Well, then you
12 understand. He's not an employee of ours.

13 THE COURT: Right.

14 MR. CRAPPS: He's not an agent of ours. He's
15 certainly not a managing or general agent of
16 ours.

17 THE COURT: Let me ask you this because again this is
18 always something I want to know in these cases
19 that wasn't included in his affidavit. What did
20 he do with the Complaint? Do you know?

21 MR. CRAPPS: I do not have the answer for you on that
22 question. But I can certainly get you that
23 information if you'd like to have it. But as
24 Cheryl testified to in her affidavit, there's
25 just no --

1 THE COURT: I understand that part but again to me
2 and I'm not sure you'll ever do this in
3 Orangeburg Court again, I always like to know
4 what they do with it, because I think that's
5 important and if he turned it over to Cheryl --

6 MR. CRAPPS: Uh-huh.

7 THE COURT: -- that would be one thing. If he threw
8 it in the trash, that would be another thing.
9 You know, it's always nice to know --

10 MR. CRAPPS: Right.

11 THE COURT: -- what he did with it, because in the
12 face of it, he's the guy there.

13 MR. CRAPPS: Right.

14 THE COURT: So what appears to be regular service but
15 anyway we don't know so I understand.

16 MR. CRAPPS: Sure. Cheryl testified that, you know,
17 nobody in her organization, in the subsidiaries
18 or Pine Hill, received it. So I do not believe
19 he got there. Brandon was a maintenance
20 technician at the property in 2016 subsequently
21 following this accident. The Plaintiff sent a
22 letter to Pine Hill addressing it to the managers
23 of that property, Ms. Dee and Ms., I have the
24 letter here, but anyway they were aware of who
25 the managers of the property were and Ms. Dee and

1 Ms. Daisy, but Brandon was not one of those
2 managers. He's a maintenance technician at the
3 property and is not able to accept service.

4 THE COURT: Do you have a copy of the -- do either
5 one of you have a copy of the Affidavit of
6 Service on Brandon?

7 MS. WILLIAMS: I do, sir. Yes, sir. It was filed
8 March 11, 2019.

9 THE COURT: I'm sure I've got it in this mess here.
10 But if you've got it it would be much easier for
11 me to look at it. Thank you. All right. I keep
12 interrupting you, Mr. Crapps, I'm sorry.

13 MR. CRAPPS: Sure, no problem. I want to address
14 your questions, but the crux of the argument is
15 Rule 43 requires that a service on corporation or
16 partnership must be executed by delivering a copy
17 of the Summons and Complaint to an Officer,
18 Managing or General Agent or any other Agent
19 authorized by employment or law to receive
20 service. Mr. Wages is none of those things as
21 evidenced by the affidavits of Cheryl and Brandon
22 and therefore service was not effectuated
23 pursuant to Rule 4 under either method that the
24 Plaintiffs attempted here. And so, you know, as
25 we weren't served with it there's no obligation

1 to respond, there's no personal jurisdiction of
2 this Court to enter the orders that it did and
3 therefore, Your Honor, we feel that they should
4 be set aside for failure of service of process.
5 And, you know, assuming service was effectuated,
6 assuming that the Amended Complaint does not
7 supercede the original Complaint, we still feel
8 that default should be set aside under Rule 60
9 for a number of reasons but I guess initially the
10 judgment is void under the reasons we've already
11 argued. No personal jurisdiction, no service and
12 the Complaint that's entered on is now a legal
13 nullity and second, Your Honor, mistake,
14 inadvertent excusable neglect so even service on
15 this maintenance technician it is sufficient
16 which, of course we argue it's not. It's an
17 excusable neglect for that Complaint not to
18 arrive to my client when he's an employee of a
19 different company as a maintenance technician.
20 He's not a manager, he's not trained to be a
21 manager, and he's certainly not a management
22 level employee. That's a bit of a failure that
23 Plaintiff gave to my client and for us to respond
24 is certainly excusable neglect. So, Your Honor,
25 those are the main point of our argument here

1 today. I'd be happy to answer any further
2 questions that you may have on those arguments.

3 THE COURT: Well, you know, my concern is, again, I've
4 been through a lot of these things because, you
5 know, we deal with, you know, the Sundown case is
6 the controlling case, I'm sure you're familiar
7 with it and, you know, so I think part of that is
8 you have to show that some -- again I guess your
9 argument's a little different than Sundown because
10 you're claiming Mr. Wages was not property
11 manager even though the Affidavit of Service said
12 he is but clearly he's not --

13 MR. CRAPPS: Right.

14 THE COURT: -- but based on the Affidavit and so
15 maybe that's a little different than the Sundown
16 case. Because the Sundown case requires you
17 first to show and what happened to the Summons
18 and Complaint. What did the person who actually
19 received it actually do with it and is there some
20 excuse that he has for not turning it over. And
21 for example, in the Sundown case, turning it over
22 to the insurance agent wasn't good enough to get
23 you out of default and there's another case that
24 says turning it over to your lawyer and he
25 defaults doesn't get you out of default either.

1 So those are the things that concern me. That's
2 why I want to you what happened to the Summons
3 and Complaint

4 MR. CRAPPS: And I'm happy to reach out to Mr. Wages
5 and get an affidavit to that effect but I guess
6 another point would be that even if Brandon had
7 turned it over to us, I still don't know that
8 that constitutes service of process since he is
9 an employee of a different company.

10 THE COURT: Well, if he actually received it and I
11 think it does but we don't know that, so we can't
12 go there.

13 MR. CRAPPS: Okay.

14 THE COURT: Okay. All right. I think that's all I
15 have at this point, but you're arguing and again
16 frankly I've dealt with this Amended Complaint
17 argument and actually did it to Ms. Williams here
18 recently where I let somebody out of default and
19 in that case she amended the Complaint a day or
20 two before the thirty days ran on that Defendant.

21 MR. CRAPPS: Uh-huh (affirmative response).

22 THE COURT: And that was important to the extent that
23 I agreed with that argument and let that
24 particular Defendant out of default. This is
25 different, because this -- this Defendant was

1 already in default well before that Complaint was
2 amended.

3 MR. CRAPPS: Right, Your Honor. And if you look at
4 the case --

5 THE COURT: So, I've got to look at all that too and
6 I will. So I'm not sure -- I think that's the
7 big difference there.

8 MR. CRAPPS: Okay.

9 THE COURT: But anyway, let me look at that and see
10 and I'll certainly -- I've glanced over your
11 Memorandum, and I'll read it a little more
12 carefully.

13 MR. CRAPPS: Sure.

14 THE COURT: All right. Ms. Williams, let me hear
15 from you.

16 MS. WILLIAMS: Thank you, Your Honor. May it please
17 the court.

18 THE COURT: Sure.

19 MS. WILLIAMS: Your Honor, to address the issue of
20 service, we have tried multiple, multiple ways to
21 get in touch with this Defendant, and I would
22 like to make an exhibit. I'LL like to make
23 copies of two different letters that we sent, one
24 in November of 2016, essentially the spoliation
25 letter, and we did direct it to Ms. Daisy or Ms.

1 Dee who our client had told us thought that they
2 were in management. I don't have the signed
3 certified mail receipt, so I don't think they
4 signed for it. Then we sent another letter on
5 June 28, 2018, it was a demand just explaining
6 what her injuries were and again addressed that
7 to Ms. Daisy and Ms. Dee in management, and a
8 Heather Hayland [ph] or H-A-Y -- I don't know,
9 somebody else signed and accepted for that. When
10 it came to serving the --

11 THE COURT: Do you want me to --

12 MS. WILLIAMS: I can show him --

13 THE COURT: I'll just ask Ms. Beach to make copies
14 and I'll be glad to do that. Do you have any
15 objection to that, Mr. Crapps? Let him look at
16 them first.

17 MR. CRAPPS: I mean I have no reason to believe these
18 are so without objection.

19 THE COURT: Thank you. I'm sorry, go ahead.

20 MS. WILLIAMS: Sure, no problem. So when it came to
21 serving the lawsuit we knew we could serve the
22 registered agent of this entity and as Your Honor
23 pointed out to Mr. Crapps that Cheryl Finch --
24 this is another exhibits -- is indeed listed as
25 the registered agent with the Secretary of State

1 and that is the address that we attempted to
2 serve her. She did not sign for it, so we went
3 another route. But I'd also like to note in her
4 Affidavit, she explains that her name used to be
5 Finch and that she's a registered agent for JDC
6 which I have here and we served JDC at 474 Wando
7 Park and that was the right one. So I don't
8 understand why Ms. Finch, if she's doing one
9 business correctly and not the other business
10 correctly, I just wanted to point that out to
11 Your Honor and suggest that there is a close
12 relationship between Pine Hill and JDC
13 Management.

14 THE COURT: I see the effective date on the second
15 one is 2009. The first one is 2006 and I'm going
16 to bet between '06 and '09 they moved --

17 MS. WILLIAMS: Right.

18 THE COURT: -- and they didn't change it, but they
19 should have changed.

20 MS. WILLIAMS: And that, you know, we have to rely on
21 the information that's provided with the
22 Secretary of State.

23 THE COURT: I understand.

24 MS. WILLIAMS: When that proved not reliable we went
25 personally to the Pine Hill Apartments, 117

1 Yellow Jasmine Road, which is where we had sent
2 prior correspondence. And our process server,
3 who by his affidavit, as you have says that it
4 was a Property Manager. Now, in their affidavits
5 that they provided in support of their motions,
6 they say he was a maintenance tech for JDC. Your
7 Honor, I don't think that the law requires my
8 process server to get into a long, lengthy
9 discussion with an individual who their employed
10 with, exactly what their job title is. If they
11 represent themselves as an agent, somebody that
12 can accept service of a complaint, I believe that
13 is sufficient, and I do believe that the
14 questions regarding what did he do with the
15 Complaint is very key, and we don't see anything
16 in these affidavits explaining what actually
17 happened to this Complaint. But they obviously
18 got the letters that we sent them. He has copies
19 of them back in -- I think that's what he just
20 argued to Your Honor. I don't know if he has
21 both but there's one in November of 2016, one in
22 2018. So they're getting mailed there. And then
23 the argument that they were not properly served
24 with the hearing notice, Your Honor, I just
25 wanted to point out that we sent it to our last

1 two -- the last known addresses. We didn't just
2 send it to the registered agent. We sent it open
3 mail to 117, the address for Pine Hill
4 Apartments, and they're saying they didn't get
5 that. What is interesting, they did get a copy
6 of your Order, and I brought here with me, Ms.
7 Thomasina Adams, who works for our firm. She
8 hand delivered a copy of the Order to Pine Hill
9 Apartments at 117, the day or two after, Your
10 Honor signed it. They got that one. And Ms.
11 Ferraro or Finch whatever her name is testified
12 in her affidavit, she got that one. So I don't
13 think there can be any dispute that this is the
14 principle place of business. They got people in
15 their office that are acting as management,
16 accepting things on behalf of the company. And I
17 brought Ms. Adams here if you need to put her
18 under oath to ask her any questions, I can
19 certainly do that but she's here, she delivered
20 it on July 9th or 10th, and they testified in
21 their Affidavit they got it on July 11th. So
22 somebody's in that office accepting. And
23 apparently on the day that the Summons and
24 Complaint were served, Mr. Brandon Wages was that
25 person in the office accepting papers on behalf

1 of the entity. To point out, as you mentioned,
2 you and I have gone through the argument recently
3 about the Amended Complaint. I think that
4 defense counsel is wrong. I don't think the
5 Amended Complaint supercedes the original
6 Complaint in this case because they were found in
7 default.

8 THE COURT: Just so I have the dates, what was the
9 date of the default?

10 MS. WILLIAMS: I've got it based on the court's
11 filing. So it was filed on February 4, 2019. We
12 filed our Affidavit of Service on March 11th.
13 The Affidavit of Default was presented on May 2nd
14 and Default was entered on May 7th.

15 THE COURT: May 7th was default date?

16 MS. WILLIAMS: Yes, sir. And again I'm going off of
17 the court's public index. I'm sure I have a copy
18 of it stamped if you need it.

19 THE COURT: The next question is when was the Amended
20 Complaint filed?

21 MS. WILLIAMS: The Amended Complaint was not filed
22 until we found in their motions they referenced
23 this JDC Management Company which we had never
24 heard of. So that was not filed until after they
25 filed all these motions, August 19, 2019.

1 THE COURT: That's what I thought. It was well after
2 the default date was entered. And to me that's
3 significant. But I'll look at, you know, I have
4 considered that argument in this other case that
5 we had and again I let that Defendant out of
6 default but that was because the Complaint was
7 amended before they were held in default, before
8 the 30 days ran which was a significant factor to
9 me in that situation. So I think this will be a
10 significant factor in the opposite direction
11 here, but I'll certainly consider it.

12 MS. WILLIAMS: And, Your Honor, as I did in that
13 case, I think the Colleton Preparatory Academy is
14 a federal case. It speaks to that issue when a
15 -- and I can hand it up to Your Honor --

16 THE COURT: And I'll look at it again.

17 MS. WILLIAMS: -- and that's 2004, Westlaw 7332779.
18 But in that case, the court specifically looks at
19 striking an answer in default that the Defendant
20 filed to an Amended Complaint and, Your Honor, we
21 did this morning file for a Motion to Strike
22 Defendant Pine Hill's Answer to that Amended
23 Complaint because I don't think that's proper --

24 THE COURT: Will you make him a copy of that?

25 MS. WILLIAMS: -- in this case. I'd also like to

1 address the argument that he raised regarding
2 failure to state a claim. I'm not sure if that
3 needs to be flushed out more but I think he's
4 saying we did not say they should -- they were on
5 an actual or constructive knowledge of a
6 hazardous condition. Your Honor, I think our
7 Complaint speaks very plainly in paragraph six
8 that reads, upon information and belief, the
9 steps were in a condition that created a slipping
10 hazard. Paragraph seven, Plaintiff fell down the
11 steps from the third floor to the second floor
12 due to said hazardous conditions. Number nine,
13 Defendant knew or should have known there was a
14 foreseeable condition on the steps which we
15 already talked about in prior paragraphs. Yet,
16 placed no warnings or cautions of said condition
17 nor made efforts to correct or prevent said
18 hazardous conditions. And in paragraph ten,
19 Defendant was directly responsible for and had
20 direct control over the condition of the Pine
21 Hill Apartments including the outdoor stairs so
22 as to insure the safety of its customers
23 including but not limited to Plaintiff. So I'm
24 not sure what the basis is for failure to state a
25 claim.

1 THE COURT: It sounds like he's telling you or trying
2 to tell me there's a meritorious defense.

3 MS. WILLIAMS: Well, and I would like to speak --

4 THE COURT: I'm not real -- I think we've got a ways
5 to go before we worry about getting there but go
6 ahead.

7 MS. WILLIAMS: Right. I would like to speak to that
8 as well, Your Honor, there's nothing in Ms.
9 Cheryl's Affidavit or Mr. Wages' Affidavit
10 regarding a meritorious defense. Nothing.

11 THE COURT: Right.

12 MS. WILLIAMS: There's an allegation in their
13 argument that's unsupportive with no affidavit or
14 any other source but for some reason because
15 there is bad weather coming through that she
16 shouldn't have been walking down steps. That
17 seems to be their meritorious defense. I'm not
18 sure that suffices under the case law as a
19 meritorious defense.

20 THE COURT: Yeah. I think the other question that I
21 have in these things is whether or not the amount
22 of the damages is a meritorious defense, you
23 know, when you argue that the damages are
24 excessive compared to, you know, the medical
25 bills and that sort of thing whether that creates

1 a meritorious defense or not. We've already --
2 I've listened to that argument before, too.

3 MS. WILLIAMS: Right.

4 THE COURT: And I guess you're making that as well.

5 MS. WILLIAMS: I don't think that's a sufficient
6 defense if you have evidence that she had some
7 other injury and maybe there is something else
8 that was causing these problems, but they haven't
9 raised that as a meritorious defense. And it was
10 concluded by the court's Order that she was
11 injured and that these injuries were related and
12 it's just a matter of setting an amount.

13 THE COURT: Right.

14 MS. WILLIAMS: And those first two items were
15 determined by their failure to respond to the
16 Complaint and all the court has to do is set an
17 amount.

18 THE COURT: Okay.

19 MS. WILLIAMS: Your Honor, I think that is all.

20 Again, just to emphasize that there's an
21 insufficient showing of good cause. I think
22 service was proper, and he obviously represented
23 himself to the process server is a property
24 manager. I don't think Mr. Frick would make that
25 up. He certainly got the name right of somebody

1 that works there. We don't know what he did with
2 the Complaint. We know that Ms. Cheryl is
3 closely tied to this entity, and she got the
4 Order but somehow she didn't get the previous
5 four other letters. I do need to speak to any
6 prejudice that would be cause to Plaintiff. As
7 we've seen, we didn't find out about this other
8 entity until somebody got involved, thankfully.
9 But I'm concerned that based on Ms. Cheryl's
10 Affidavit of all these [unintelligible] people
11 and I hadn't had the ability to do any discovery
12 of all those entities and what their role might
13 have been and their decision making power has
14 been, you know, a long delay, eight months, nine
15 months, I'm not sure where we are now, in getting
16 this case moving. I think those are certainly
17 prejudicial to the Plaintiff in proving her case,
18 you know, I don't -- these other people that have
19 represented themselves to be managers of the Pine
20 Hill, Ms. Dee and the other lady. We don't know
21 if they even exist, so we could be looking at not
22 being able to find key witnesses due to the delay
23 with this default and these motions have caused
24 so I do think there's significant prejudice to
25 the Plaintiff. We do have an Amended Complaint

1 with JDC Management that his defense counsel has
2 indicated he's not representing both of them.
3 They've got separate counsel so obviously they
4 have some sort of separate response -- potential
5 responsibility in this case. And I don't know if
6 there's any idemnity issues. There's just, you
7 know, I've been greatly prejudiced at this point
8 by the delay in this default has caused. And I
9 don't know -- I brought Ms. Adams here and I
10 don't know if you need to ask her any questions.

11 THE COURT: I don't think so, no.

12 MS. WILLIAMS: Okay. Thank you, Your Honor.

13 THE COURT: Mr. Crapps?

14 MR. CRAPPS: Sure and just briefly, Your Honor, I
15 think the case law in my memo will show that even
16 Entry of Default should be set aside upon the
17 filing of an Amended Complaint. We'll rehash
18 that and as it's --

19 THE COURT: I'll certainly look into that. I mean
20 but I --

21 MR. CRAPPS: -- I will just note I have a --

22 THE COURT: I'm just telling you I think -- I think I
23 have concern about that but I'll certainly look
24 at it.

25 MR. CRAPPS: Okay. It's not a reported case and I

1 didn't cite it but I have an Order of Judge -- I
2 believe it's Kie, K-I-E in Spartanburg that sets
3 aside an Entry of Default for -- for an Amended
4 Complaint.

5 THE COURT: Knie is the way she pronounces it. I'll
6 be glad to consider that.

7 MR CRAPPS: Sure. And as far as the meritorious
8 defenses, Your Honor, I think our points on that
9 issue are that we had had knowledge of the defect
10 and either created or had knowledge of it and
11 failed to remedy it. I think our points to that
12 were there was just no allegation that he had
13 knowledge of a hazardous defect and their
14 Complaint says that he had a knowledge of a
15 foreseeable condition and the point about the
16 hurricane and the rain which the Plaintiff
17 testified to in her damages hearing that she knew
18 it was wet and it was raining. You know, how are
19 we supposed to have knowledge of a condition
20 that's being created as is -- as it's happening.
21 So, you know, I think we have a lot of
22 meritorious defenses and I don't think they
23 satisfied the Wintersteen vs. Food Lion case, of
24 course, as noted we don't have imminent discovery
25 yet so and discovery could -- could have occurred

1 and that JDC Management is in default, not my
2 client's fault. So there are a lot of defenses
3 at issue here. The standard for showing a
4 meritorious defense is actually very low and we
5 don't have to present evidence saying we will
6 win. It's just by noting them at this stage. So
7 not wanting to rehash all that I've covered I
8 wanted to address those two issues.

9 THE COURT: Sure.

10 MR. CRAPPS: And I think that's all I have.

11 THE COURT: I appreciate it and I'll certainly take
12 it under advisement. We'll go off the record.
13 (End of Recording.)

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STATE OF SOUTH CAROLINA)
) CERTIFICATE
COUNTY OF LEXINGTON)

I, Barbara S. Ham, Notary Public in and for the State of South Carolina at Large, do hereby certify that the foregoing is a true, accurate and complete Hearing Transcript of the proceedings had in the hearing of the captioned case, in Orangeburg County, South Carolina, on the 19th day of November 2019.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

August 17, 2020

Barbara S. Ham

Barbara S. Ham
Notary Public for South Carolina
My Commission Expires: 04/13/2026

WILLIAMS & WILLIAMS

ATTORNEYS AT LAW

MARSHALL B. WILLIAMS
(1912 - 1995)
CHARLES H. WILLIAMS, II
C. BRADLEY HUTTO
RUSSELL A. BLANCHARD, IV
DAVID R. WILLIAMS
CHARLES H. WILLIAMS, III
VIRGINIA W. WILLIAMS

1281 RUSSELL STREET (29115)
Post Office Box 1084
ORANGEBURG, SOUTH CAROLINA 29116-1084
TELEPHONE: (803) 534-5218
FACSIMILE: (803) 536-6544

November 10, 2016

7016 1370 0000 8500 0721

Pine Hill Apartments
Attention: Ms. Daisy, Ms. Dee, Management
117 Yellow Jasmine Road
Orangeburg, SC 29118

Re: Shanika Void, date of incident on or about 9/6/16

Dear Sir or Madam:

Please be advised our firm is investigating an incident that occurred at your apartment complex on or about September 6, 2016, involving Ms. Shanika Void. We understand that there are cameras which recorded this event. By this letter, we are requesting preservation of video evidence and any other evidence of said event. If you fail to preserve and maintain this evidence, we will seek sanctions provided under South Carolina law including spoliation of evidence. It is necessary to preserve all the requested evidence in order for Ms. Void to be able to make a determination about the culpability and punitive exposure of any party to a potential action.

We specifically request the following evidence be maintained, preserved and not destroyed, modified, altered, repaired, or changed in any manner until there is settlement or resolution of this incident between the potential parties:

1. Any video surveillance footage taken on September 6, 2016
2. Any other documentation regarding the above referenced incident

Please forward copies of the same to our attention. Likewise, let us know of any fees required. Should you have any questions, please do not hesitate to contact my office.

Kind Regards,

Virginia W. Williams

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PS Form 3800, April 2015 PSN 530-02-000-9047 See Reverse for Instructions

Handwritten notes: V.W. Williams, S. Void

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AUDIO RECORDING OF
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OF HEARING HELD ON
NOVEMBER 19, 2019
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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Aug 18 2020

SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

Judge James B. Jackson, Jr., Master-In-Equity
Trial Court Case No.: 2019-CP-38-00190

Appellate Case No. 2020-000433

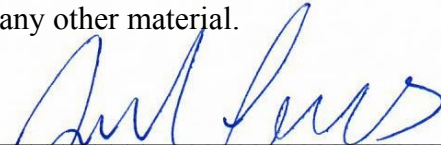
Shanika Monique Void Respondent

v.

Pine Hill Apartments, L.P. and JDC Management, LLC Defendants
Of whom, Pine Hill Apartments, L.P., is the Appellant

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Jordan Crapps (SC Bar No. 100580)
Gallivan White & Boyd, PA
1201 Main Street, Suite 1200
Post Office Box 7368 (29202)
Columbia, SC 29201
(803) 779-1833 (Ofc)
jcrapps@gwblawfirm.com

-and-

James M. Dedman, IV (SC Bar No. 70664)
6805 Morrison Blvd., Suite 200
Post Office Box 12250 (28220)
Charlotte, NC 29211
(704) 552-1712 (Ofc)
jdedman@gwblawfirm.com

Attorneys for Appellant

August 18, 2020