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March 16, 2021

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SC Court of Appeals

VIA EMAIL AND U.S. MAIL

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

RE: *5 Star Life Insurance Co. v. Peek Performance, Inc.*
Appellate Case No. 2018-002114
Our File No. 049288/01501

Dear Ms. Kitchings:

Appellant 5Star Life Insurance Co. (“Appellant” or “5Star”) writes pursuant to SCACR 208(b)(7) in response to the supplemental citation provided by Respondent Peek Performance, Inc. (“Respondent” or “Peek”) via a letter dated March 12, 2021. As explained more fully below, the supplemental authority cited by Peek has no bearing on the appealability of the above-referenced matter, which arises from a different procedural context, involves a different Rule of Civil Procedure, and is immediately appealable under binding precedent that was not disturbed by the Supreme Court’s recent ruling.

Respondent’s recent letter cites to *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, No. 2019-002052, 2021 WL 908497 (Mar. 10, 2021), for its discussion of the appealability of an order denying a motion pursuant to **Rule 55**, SCRPC to set aside an entry of default. The non-immediate-appealability of an order denying such a motion, however, is old news and was already discussed and distinguished in 5Star’s briefing. (See Appellant’s Mem. Regarding the Appealability of the Orders Challenged on Appeal (R. 206-64).) Further, and more importantly, the holding in *Palmetto Constr. Grp., LLC* is irrelevant here because the immediate appealability of the instant case is based on **Rule 60**, SCRPC, not Rule 55. (See *id.*; Final Reply Brief of Appellant (“Reply”) at 5-6.)

This Court has already requested, received, and considered memoranda regarding the appealability of the issues before the Court and—most importantly—has resolved that question and concluded the appeal should proceed. See Correspondence to Counsel

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(S.C. Ct. App., Feb. 1, 2019) (stating in part that, “Upon consideration of the parties’ appealability memoranda, the appeal will be allowed to proceed”). Nothing in *Palmetto Constr. Grp., LLC* changes that analysis or requires a different conclusion.

As explained in 5Star’s Reply Brief, Peek expressly requested a *judgment*, the trial court expressly entered default *judgment*, and 5Star expressly moved for relief from *judgment* pursuant to Rule 60, SCRPC. (See Reply at 5.) Accordingly, 5Star appealed from two Orders: (1) **an Order denying 5Star’s motion for relief from default judgment pursuant to Rule 60(b), SCRPC**, and (2) an Order entering default and default judgment. The former is immediately appealable, and the latter—though it could not be immediately appealed on its own—can be (and in this Court’s discretion *is being*) considered along with an immediately appealable Order. (See Appellant’s Mem. Regarding the Appealability of the Orders Challenged on Appeal at 4–7 (R. 210–13) (citing *Winesett v. Winesett*, 287 S.C. 332, 334, 338 S.E.2d 340, 341 (1985); *Ex parte Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zoning Appeals*, 340 S.C. 57, 58, 530 S.E.2d 383, 384 (2000); *Thynes v. Lloyd*, 294 S.C. 152, 154, 363 S.E.2d 122, 123 (1987); Jean H. Toal et al., *Appellate Practice in South Carolina* 100 (2d ed., 2002); *Watson v. Underwood*, 407 S.C. 443, 459, 756 S.E.2d 155, 163 (Ct. App. 2014).)

Respondent’s supplemental citation does not alter, amend, or overturn any of authority previously relied upon by the Court in permitting this appeal to proceed. The *Palmetto Constr. Grp., LLC* opinion does not cite or address the Rule 60 situation presented in this case.

If you need any additional information, please do not hesitate to contact us.

Very truly yours,



William S. Brown

cc: James Carpenter, Esquire