

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

5Star Life Insurance Co., Appellant,

v.

Peek Performance, Inc., Respondent.

Appellate Case No. 2018-002114

Appeal From Greenville County
G. Thomas Cooper, Jr., Circuit Court Judge

Opinion No. 5837
Heard May 6, 2021 – Filed July 21, 2021

APPEAL DISMISSED

William Stevens Brown, V, Miles Edward Coleman, and
David Curry Dill, all of Nelson Mullins Riley &
Scarborough, LLP, of Greenville, for Appellant.

James G. Carpenter, of Carpenter Law Firm, PC, of
Greenville, for Respondent.

PER CURIAM: 5Star Life Insurance Company (5Star) appeals the trial court's orders entering an entry of default on Peek Performance, Inc.'s (Peek) counterclaims for breach of contract and defamation and ordering it to respond to discovery. We dismiss the appeal as interlocutory, and we remand to allow for discovery and a damages hearing.

The trial court entered an entry of default against 5Star, ordered it to respond to Peek's discovery requests, and denied its motion to set aside the entry of default.

None of these rulings are immediately appealable. *See Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC (Palmetto I)*, 428 S.C. 261, 266, 834 S.E.2d 204, 206 (Ct. App. 2019) ("[T]he denial of a motion to set aside an entry of default is not appealable until after final judgment."), *aff'd as modified on other grounds*, 432 S.C. 633, 856 S.E.2d 150 (2021); *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 635–36, 856 S.E.2d 150, 151 (2021) ("A party in default has three primary options: (1) do nothing pending the entry of judgment by default under Rule 55(b), SCRCPP; (2) file an appearance under Rule 55(b)(2), SCRCPP, in an attempt to protect its interests before the entry of judgment by default; or (3) request the entry of default be set aside pursuant to Rule 55(c), SCRCPP. Under either option, the party has no right of appeal until after final judgment."); *Grosshuesch v. Cramer*, 377 S.C. 12, 30, 659 S.E.2d 112, 122 (2008) ("[D]iscovery orders, in general, are interlocutory and are not immediately appealable because they do not, within the meaning of the appealability statute, involve the merits of the action or affect a substantial right."). However, 5Star argues the trial court also entered a default judgment, which is immediately appealable. *See Palmetto I*, 428 S.C. at 265–66, 834 S.E.2d at 206 ("The denial of a motion to set aside a default judgment is immediately appealable as it is a final judgment on the merits."). We disagree.

A default judgment can only be entered once damages have been determined either following a damages hearing or without a hearing if the claimant seeks "a liquidated amount, a sum certain[,] or a sum which can by computation be made certain." Rule 55(b). Until damages are entered, there is no default judgment. *See Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct. App. 1987) ("[Under Rule 55(b),] a court is unable to enter judgment until damages are determined. The entry of default is an official recognition of the failure to appear or otherwise respond, but is not a judgment by default."); *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241–42, 246 S.E.2d 880, 882 (1978) ("[T]here is a difference between a defendant being declared in default and subsequently having judgment entered against him for damages."); *see also* Alex Sanders & John S. Nichols, *Trial Handbook for South Carolina Lawyers* § 4:10 (5th ed. 2020) ("Default judgment *does not occur until the assessment of damages*, usually at a damages hearing." (emphasis added)). In *Beckham v. Durant*, this court noted that the parties and the trial court confused the terms "entry of default" and "entry of default judgment" and held the trial court's order was an entry of default because damages had not yet been determined. 300 S.C. 329, 331 & n.2, 387 S.E.2d 701, 702–03 & n.2 (Ct. App. 1989).

In this case, the trial court ordered "that an Entry of Default be entered against 5Star, and that Default Judgment be entered against 5Star *as to liability* on" Peek's counterclaims. (emphasis added). Peek did not seek a liquidated amount or a sum certain, and the court stated it would schedule a damages hearing following a sufficient time for discovery. A "default judgment as to liability" is no different than an entry of default because it has the same effect: it precludes the defaulting party from contesting liability. *See Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012) ("By defaulting, a defendant forfeits his 'right to answer or otherwise plead to the complaint.' In essence, the defaulting defendant has conceded liability." (quoting *Howard*, 271 S.C. at 242, 246 S.E.2d at 882)). Although Peek and the trial court used the term "default judgment as to liability," the court's order is not a final judgment because damages have not been entered against 5Star. *See Beckham*, 300 S.C. at 331 & n.2, 387 S.E.2d at 702–03 & n.2 (disregarding the terminology used by the court and the parties and finding the court granted an entry of default and not a default judgment because damages had not yet been determined); *Palmetto I*, 428 S.C. at 266, 834 S.E.2d at 206 (noting the parties had not participated in a damages hearing and the court had not entered a default judgment); *see also Tillman v. Tillman*, 420 S.C. 246, 249, 801 S.E.2d 757, 759 (Ct. App. 2017) ("A final judgment is one that ends the action and leaves the court with nothing to do but enforce the judgment by execution. An order reserving an issue, or leaving open the possibility of further action by the trial court before the rights of the parties are resolved, is interlocutory." (citation omitted)). Therefore, we dismiss the appeal and remand to allow the trial court to conduct a damages hearing.¹

APPEAL DISMISSED.

WILLIAMS, KONDUROS, and HILL, JJ., concur.

¹ 5Star argues this case is immediately appealable because it moved for, among other things, relief from an entry of judgment under Rule 60(b), SCRCP, which the trial court denied. We disagree. Because there was no final judgment, there was no order from which 5Star could move for relief pursuant to Rule 60(b). *See Thynes v. Lloyd*, 294 S.C. 152, 154, 363 S.E.2d 122, 123 (Ct. App. 1987) ("[Because] no final judgment has been entered, it is . . . clear that the motion of [the appellant] was not a motion under Rule 60(b)."). Therefore, the trial court's denial of 5Star's Rule 60(b) motion does not make this matter immediately appealable.