# Order Denying Lyft, Inc.'s Motion to Set Aside Default

Filed March 26, 2020

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| STATE OF SOUTH CAROLINA<br><br>COUNTY OF CHARLESTON<br><br>Shirley M. B. Williams, individually, and as Personal Representative of the Estate of Jason Lynn Williams, deceased.<br><br>Plaintiff,<br><br>v.<br><br>Lyft, Inc., Lyft Drives South Carolina, Inc., Kaitlyn Meadows<br><br>Defendants. | ) | IN THE COURT OF COMMON PLEAS<br>NINTH JUDICIAL CIRCUIT<br>C/A NO. 2019-CP-10-03739<br><br>**ORDER DENYING LYFT'S MOTION TO SET ASIDE DEFAULT** |



This matter came before the Court on February 28, 2020 for a hearing on Plaintiff's Motion for Entry of Default and Lyft's Motion to Set Aside Entry of Default. Shirley M. B. Williams, individually, and as Personal Representative of the Estate of Jason Lynn Williams, deceased ("Plaintiff") was represented by Brooklyn O'Shea of O'Shea Law Firm. Lyft, Inc. and Lyft Drives South Carolina, Inc. ("Lyft") was represented by Sarah Eibling of Nelson Mullins. Also present were Michael Freeman of Griffith, Freeman & Liipfert (counsel for Defendant Kaitlyn Meadows) and Gary Lovell of Copeland, Stair, Kingma & Lovell (former counsel for Lyft). Upon review of the written submissions and materials provided by the parties and having heard oral arguments, the Court denies Lyft's Motion to Set Aside Entry of Default.

## FACTUAL/PROCEDURAL BACKGROUND

This case arises out of a fatal motor vehicle collision on March 20, 2018 where Jason Lynn Williams, deceased, was a passenger in the backseat of a vehicle driven by Lyft driver, Defendant Kaitlyn Meadows, as she was using the Lyft mobile application. On January 23, 2019, counsel for Lyft informed Plaintiff's counsel, that he had been retained and Plaintiff's counsel provided counsel for Lyft with records requested. (See Plaintiff's Memorandum, Ex. 1). On February 5,

2019, the attorneys exchanged emails and information about the case. Plaintiff's counsel provided counsel for Lyft with additional documents as requested. (See Plaintiff's Memorandum, Ex. 1). The parties continued pre-suit negotiations and coverage potentially available. (Affidavit of Lovell, Lyft's Motion to Set Aside Entry of Default, Plaintiff's Memorandum, Ex. 1). On May 30, 2019, Plaintiff's counsel informed counsel for Lyft that Plaintiff would be filing suit and asked if he could accept service. (Affidavit of Lovell, Lyft's Motion to Set Aside Entry of Default, Plaintiff's Memorandum, Ex. 1). Counsel for Lyft asked who Plaintiff would be suing and Plaintiff's counsel informed him that Plaintiff would be suing Lyft and Kaitlyn Meadows. (Affidavit of Lovell, Lyft's Motion to Set Aside Entry of Default, Plaintiff's Memorandum, Ex. 1). Plaintiff never heard anything back regarding acceptance of service from counsel for Lyft.

Plaintiff filed suit on July 15, 2019. On July 18, 2019, The Post and Courier contacted Plaintiff's counsel and Lyft and published an article about the lawsuit. Plaintiff's counsel did not respond to the newspaper. Post and Courier reported that Lyft Spokesman Campbell Matthews sent an email declining to comment. (Plaintiff's Memorandum Ex. 4). Because former counsel for Lyft, Mr. Lovell, never communicated an ability to accept service, Plaintiff served Lyft via certified mail upon the registered agent, CT Corporation on September 3, 2019. Lyft was also served with discovery requests. (Affidavit of Lovell, Lyft's Motion to Set Aside Entry of Default, Affidavit of Default). On September 5, 2019, a representative of Lyft contacted counsel for Lyft, Mr. Lovell, via email and provided a copy of the Summons, Complaint, Discovery, and Service of Process Notification. (Affidavit of Lovell, Lyft's Motion to Set Aside Entry of Default). Plaintiff filed an Affidavit of Default and Motion for Entry of Default and Damages Hearing on October 15, 2019 providing that no answer or responsive pleading was timely filed as required by Rule 12(a), SCRCP.

It is undisputed by the parties that Lyft failed to timely file an answer or responsive pleading. Entry of default is a ministerial act, which a clerk is required to perform once default is made to appear by the affidavit of the moving party. Rules 12(a), 55(a), SCRCP, Stark Truss Co. v. Superior Const. Corp., 360 S.C. 503, 602 S.E.2d 99 (Ct. App. 2004) and Thynes v. Lloyd, 294 S.C. 152, 153–54, 363 S.E.2d 122, 123 (Ct.App.1987) (holding that "whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit" of the moving party). Based upon the affidavit of the moving party, the Court granted the Motion for Entry of Default from the bench.

The Court then heard oral arguments on Lyft's Motion to Set Aside Default. Although the Lyft Defendants were separately named and served, Lyft contends that the Motion to Set Aside Default is on behalf of both Lyft Defendants as the same entity in the form of Lyft, Inc. and its subsidiary d/b/a Lyft Drives South Carolina Inc. Therefore, the Court considered Lyft's Motion to Set Aside Default as to both Defendants, given the named Defendants represent the same entity according to Lyft.

## LEGAL STANDARD

The standard for granting relief from an entry of default under Rule 55(c) is "good cause." Rule 55(c), SCRCP. This standard requires the party seeking relief from an entry of default to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. *Sundown Operating Co. v. Intedge Indus., Inc*., 383 S.C. 601, 607–08, 681 S.E.2d 885, 888 (2009). Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is

granted. *Id. (*citing *Wham v. Shearson Lehman Bros., Inc.,* 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct.App.1989)). A motion under Rule 55(c) is addressed to the sound discretion of the trial court. *Id. (*citing *Williams v. Stalnaker,* 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct.App.1994)).

## DISCUSSION

**1. Good Cause**

The Court must first consider whether or not the Lyft put forth a satisfactory explanation for the default showing good cause. Rule 55(c), SCRCP. *Sundown Operating Co. v. Intedge Indus., Inc*., 383 S.C. 601, 607–08, 681 S.E.2d 885, 888 (2009). According to Lyft, Plaintiff's counsel did not notify Lyft's counsel that the Summons and Complaint had been filed or served. Lyft argued "[b]ecause Plaintiff's counsel knew of Defendant Lyft's counsel's involvement and did not consult prior to filing the Motion… the Motion should be stricken and Defendant Lyft should be allowed to Answer Plaintiff's Complaint" citing Rule 11, SCRCP. (Lyft's Motion to Set Aside Default p. 6). There is no unilateral duty for one lawyer to notify an adverse insurance company or lawyer of the status of service of process upon a defendant absent a promise to do so. Neither Plaintiff nor her counsel had an obligation, ethically or otherwise to defense counsel to update him regarding the status of service of process. Importantly, even after the missed deadline to file an answer and after both parties had filed motions, the parties continued to communicate regarding default through their attorneys. (Plaintiff's Memorandum Ex. 1). Counsel for Plaintiff represented to the Court during the hearing that in those communications, Plaintiff attempted to resolve the case entirely through discussions with Mr. Lovell by proposing mediation and attempted to mitigate the prejudice to Plaintiff and to resolve the issue of default by proposing that Lyft sufficiently respond to the discovery served with the Complaint in exchange for Plaintiff agreeing to set aside default.

Lyft allegedly never responded to Plaintiff's offers and made no further communication with Plaintiff's counsel prior to the hearing on this matter, which took place months later.

Lyft contends it did not timely answer the Complaint because former counsel, "Mr. Lovell was working from home with intermittent electrical and email service when he received the client email regarding the Summons and Complaint on his portable devices IPhone and IPad. Mr. Lovell had no home internet or Wi-Fi service at the time due to the storm, but was able to intermittently receive and send email through his IPhone and IPad via his wireless phone service." (Affidavit of Lovell ¶ 7, Lyft's Motion to Set Aside Entry of Default p. 3). "Mr. Lovell thought he had successfully forwarded the client email regarding this lawsuit with its attachments to his paralegal's email box at the office that day, to be included in the office's answer docket list" but the email did not go through due to his intermittent Wi-Fi during Hurricane Dorian. (Affidavit of Lovell ¶ 7, Lyft's Motion to Set Aside Entry of Default p. 3). The failed email has not been located and cannot be found on any of the devices used by counsel. (Affidavit of Lovell ¶ 7, Lyft's Motion to Set Aside Entry of Default p. 3). According to Lyft, in addition to intermittent Wi-Fi on September 5, 2019 five days later, counsel "was in an auto accident on September 10 that required a trip to the emergency room for a mild concussion and other injuries" causing him to not follow up on the firm's Answer docket list and Lyft missed the deadline. (Affidavit of Lovell ¶ 7, Lyft's Motion to Set Aside Entry of Default p. 4).

Lyft was served with the Summons and Complaint on September 3, 2019 and notified previous counsel, Mr. Lovell, of the lawsuit and service thereof on September 5, 2019 by emailing the Summons, Complaint, Discovery and Service of Process notification to Mr. Lovell. (Affidavit of Lovell ¶ 7) On September 9, 2019, the Supreme Court issued an Order regarding Hurricane Dorian, which addressed compliance with filing deadlines pursuant to Rule 6, SCRCP, in light of

Hurricane Dorian. The Order declared Tuesday, September 3, 2019 through Friday September 6, 2019 to be statewide holidays. See Re: Hurricane Dorian, S.C. (2019). Notably, Lyft does not contend Hurricane Dorian impacted service of process or the notice provided to counsel. Further, Lyft's deadline to file an answer did not fall during any of the dates impacted by Hurricane Dorian. Despite intermittent Wi-Fi on September 5, 2019 and the motor vehicle collision on September 10, 2019, Lyft did not follow up on the status of the email attempt during the storm and did not request an extension from Plaintiff prior to missing the deadline to answer. Plaintiff argued that had Lyft accepted service as requested initially, they would have been in control of their deadline to file responsive pleadings.

Lyft had the opportunity to accept service and to request an extension. Lyft also had ample notice of the lawsuit, ample time to follow up on any allegedly failed emails during the hurricane, and ample time left to review and answer the Complaint despite the circumstances provided for good cause. Parties to litigation regularly experience Wi-Fi problems and are not excused from filing deadlines as a result. The Court finds that the failure to forward an email approximately a month before an answer or responsive pleading is due and then not following up on the email knowing there was an technical issue due does not amount to good cause shown.

**2. The *Wham* Factors**

As provided by *Sundown Operating Co. v. Intedge Indus., Inc*., once a party has put forth a satisfactory explanation for the default, the trial court should also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Id. (*citing *Wham v. Shearson Lehman Bros., Inc.,* 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct.App.1989)). The trial court need not make specific findings of fact for each *Wham* factor if there is sufficient evidentiary support on the record for the

finding of the lack of good cause. *Sundown Operating Co. v. Intedge Indus., Inc*. at 607–08 *(*citing *Dixon v. Besco Engineering, Inc.,* 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995)). In addition to addressing good cause, the parties made arguments regarding the *Wham* factors, which the Court considered. Here, the Court finds that there was not a satisfactory explanation provided for the default to establish the requisite good cause standard and there is sufficient evidentiary support in the record for the finding of the lack of good cause. Therefore, the Court need not make specific findings of fact for each *Wham* factor.

**CONCLUSION**

For the reasons set forth herein, the Court denies Lyft's Motion to Set Aside Entry of Default.

**AND IT IS SO ORDERED**.

The Honorable Perry M. Buckner
Presiding Judge

Walterboro, South Carolina
March ___, 2020

Charleston Common Pleas

**Case Caption:** Shirley M B Williams , plaintiff, et al VS Lyft Inc , defendant, et al

**Case Number:** 2019CP1003739

**Type:** Order/Other

It is so Ordered

s/ Perry M Buckner III 2122