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**Sep 28 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM LAURENS COUNTY  
Court of Common Pleas

Eugene C. Griffith, Jr., Circuit Court Judge

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Appellate Case No. 2020-001472

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Vidhyaben R. Patel, Individually and as Co-Personal  
Representative of the Estate of Rameshchanda Prabhudas  
Patel, and Darshak Kumar Patel, Individually and as  
Co-Personal Representative of the Estate of  
Rameshchandra Prabhudas Patel, ..... Appellants/Respondents,

v.

Hardik R. Patel, Anal H. Patel and AAHARVID, LLC, ..... Respondents/Appellants.

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**APPELLANTS/RESPONDENTS' FINAL REPLY BRIEF OF APPELLANTS**

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## **INTRODUCTION**

Respondents/Appellants' Brief raises as an additional sustaining ground the fact that Appellants/Respondents' "[d]efault on the Counterclaims asserted by Respondents created admissions by Appellants that required denial of Appellants' prayer for equitable relief in the complaint." For the reasons set forth below, the Trial Court properly set aside any default on the part of the Appellant and heard the matters raised by the Appellants' Complaint and the Respondents' Counterclaims prior to issuing his Order. The "default" does not require judgement for the Respondents and does not serve as an additional sustaining ground for affirming Judge Griffith's Order. (R. pp. 11-44; 56-57).

## **STATEMENT OF CASE**

On April 22, 2019, Respondents filed their First Amended Answer, Affirmative Defenses and Counterclaims. (R. pp. 97-129). Respondents' Counterclaim sought Declaratory Judgment as to the legal issues involving and arising out of the properties at issue in the above-referenced appeal (the Laurens County Residence and Convenience Store), as well as a cause of action related to Appellants' alleged conversion of Lottery Tickets; Breach of Fiduciary Duty arising out of the Estate of Ramesh Patel, and a cause of action for alleged conversion of Respondent Hardin Patel's ownership in SHRIJI HARI, LLC. (R. pp. 97-129).

On May 24, 2019, Respondents moved for Entry of Default against Appellants for failure to file an Answer or otherwise plead to the counterclaims or appear within the time period required by law. (R. pp. 142-143). The filing of the Motion followed communications between counsel for the Respondents and then counsel for Appellants and the apparent granting of at least one extension until May 24, 2019. (R. p. 861, ll. 3-18; pp. 861, l. 19 – 862, l. 8). On May 28, 2019, Respondents moved for default and Appellants filed their Reply to Amended Counterclaim. (R. pp. 130-136;

137-138). Despite Respondents' counsel's representation to the Court that Respondents never received a copy of the Reply, the Reply was electronically served on all counsel. (R. pp. 137-138). On May 28, 2019, despite the filing of a Reply on May 24<sup>th</sup>, Judge Griffith entered his Order/Entry of Default on Counterclaims. (R. pp. 1-3). No damages hearing was set and the matter proceeded with discovery and was set for trial before Judge Griffith in February of 2020. After two days of trial the matter was recessed. Because of scheduling conflicts and the COVID-19 Pandemic, Trial was not resumed and completed until June of 2020.

At the close of the Appellants' case, Respondents' counsel moved for a Directed Verdict on a number of grounds, including Appellants' alleged default. (R. pp. 836, l. 23 – 864, l. 25). Respondents' counsel informed the Court that she was not served with a copy of the Reply which was filed by Appellants' sole counsel at the time, Attorney Sam Price. (R. p. 863, ll. 11-14). At that time, counsel for the Appellants moved to set aside Default. (R. pp. 865, l. 25 – 868, l. 13). The Court took the matter under advisement and the case proceeded with Respondents' witnesses. (R. p. 867, ll. 14-16; p. 489, ll. 1-4, 7-8). Judge Griffith then proceeded to hear the remainder of the case.

On August 28, 2020, Judge Griffith issued his Order which forms the basis of the present appeal. (R. pp. 11-43). Judge Griffith's Order specifically found and Judge Griffith ruled that it would be more appropriate to rule on the merits of these issues. (R. pp. 11-43). As to the First Counterclaim for Declaratory Judgment, Judge Griffith ruled and concluded that it was tantamount to a mere denial of Appellants' Claims which were asserted and set forth in Appellants' Complaint, and that since his Order resulted in a denial of these same claims that the relief sought would be redundant. (R. pp. 11-43). Judge Griffith also ruled on the Respondents' Second and Third Counterclaims. His ruling as to these issues is not on appeal before the Court in this Appeal.

However, Judge Griffith found for the Respondents as to the Second Cause of Action for Conversion, but found and ruled as a matter of law that Respondents failed to establish their entitlement to monetary damages. Again, this issue was not appealed. Judge Griffith ruled that matters arising out of the Estate of Ramesh Patel were in litigation in a matter pending in Probate Court and could best be disposed of in that proceeding. (R. pp. 11-44).

### ARGUMENT

**1. ANY ALLEGED DEFAULT ON THE PART OF APPELLANTS TO RESPONDENTS' COUNTERCLAIMS IS NOT A SUSTAINING GROUND TO AFFIRM JUDGE GRIFFITH'S ORDER.**

The power to set aside a default is exercised within the sound discretion of the trial court whose decision will not be set aside on appeal absent a clear showing of an abuse of that discretion. *Hill v. Dotts*, 345 S.C. 304, 547 S.E.2d. 894 (Ct. App. 2001); *Rochester v. Holiday Magic, Inc.* 253 S.C. 147, 169 S.E.2d. 387 (1969); *Ledford v. Pennsylvania Life Ins. Co.*, 267 S.C.671, 230 S.E.2d. 900 (1976). And abuse of discretion in ruling on a motion to vacate default judgment arises in cases in which judge issuing order was controlled by some error of law, or where order, based on factual, as opposed to legal considerations, is without evidentiary support. *Ledford v. Pennsylvania Life Ins. Co.*, 267 S.C.671, 230 S.E.2d. 900 (1976).

In the present case, the Appellants filed a Reply to the Respondents' Counterclaims on the very day that Appellants' counsel had agreed to file it, May 24, 2021. Although Judge Griffith granted Respondents' motion for default judgement four days later, no damages hearing was ever set and the case proceeded to trial in February of 2020. Because of COVID, the case was not resumed and concluded until June of 2020. When Respondents' counsel raised the alleged default as a grounds for Directed Verdict, the Appellants' counsel moved to set aside the default and the Court took the matter under advisement. After hearing all of the evidence presented before him, Judge Griffith determined that justice would be best served by issuing an order based on the

evidence presented before him and not upon any default. This was clearly not an abuse of discretion on the Court's part. The Court's ruling with respect to the Appellants' alleged default was not an abuse of discretion. *Southeastern Housing Foundation v. Smith*, 380 S.C.621, 670 S.E.2d.680 (S. C. App. 2008).

### **CONCLUSION**

The Appellants' alleged default as to Respondents' Counterclaims does not act as an additional sustaining ground to affirm Judge Griffith's Orders. For the reasons set forth in Appellants' Brief, the Appellants again respectfully request that this Court review the evidence presented by the parties at trial, reverse the Lower Court's Order dated August 28, 2020, which found and concluded as a matter of law that they were not entitled to a Constructive and/or Resulting Trust over the property at issue in this lawsuit as alleged in their Complaint.

In the alternative the Appellants respectfully request that this Court review the evidence presented at Trial and make its own determination that the Appellants are entitled to the relief sought in their complaint; that the family residence in Clinton, South Carolina was held in trust for Ramesh and Vidhya as beneficial owners; that the Clinton convenience store was held in trust with Ramesh and Vidhya being beneficial owners, and for an accounting and distribution of all assets of the Convenience store since Vidhya was excluded from it.

[Signature block to follow]

Respectfully submitted,

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**CERTIFICATE OF COUNSEL**

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The undersigned certified that this Final Brief complies with Rule 211(b), SCAR.

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