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**Nov 30 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Alexander S. Macauley, Circuit Court Judge

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Appellate Case No. 2020-001706  
Trial Court Case No. 2020-CP-23-03928

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Carolina Auto Credit/Colleen Bartona,.....Appellant,

v.

Nadira Jackson,.....Respondent.

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**AMENDED FINAL BRIEF OF APPELLANT**

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**Cases**

*Micronics v. South Carolina Dept. of Rev.*, 345 S.C. 506, 548 S.E.2d (S.C. App. 2001)  
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**Statutes**

Rule 60 of the South Carolina Rules of Civil Procedure ..... *passam*

## STATEMENT OF ISSUES ON APPEAL

- I. Did the Circuit Court err in refusing to set aside a Magistrate's Court Default Judgment when Defendants Counsel's staff made a clerical error in failing to calendar the bench trial?
- II. Does Rule 60 of the SCRCP and subsequent caselaw, particularly, *Micronics v. South Carolina Dept. of Rev.*, 345 S.C. 506, 548 S.E.2d (S.C. App. 2001), support setting aside the default judgment due to clerical error?
- III. Do the interests of Justice support the setting aside of default judgment to allow a determination on the merits?

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## FACTUAL BACKGROUND

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On December 30, 2020, Appellant filed its Notice of Appeal with this Honorable Court. Appellant respectfully appealed the Order issued by the Honorable Alexander S. Macaulay. The Order, issued on December 2, 2020, denied Appellant's appeal of the Default Judgment issued by the Honorable Jacquelyn Duckett on August 10, 2020. Due to an error by Appellant calendaring the bench trial date, a default judgment was granted for Respondent in the amount of \$7,420.00.

After Counsel for Appellant asked the Magistrate to reconsider the ruling, and after that request was denied, Appellant sought relief from the Circuit Court under Rule 60 of the South Carolina Rules of Civil Procedure. Upon the matter being heard by the Circuit Court, Appellant was asked to provide authority allowing the Circuit Court to grant the relief Appellant sought from the Court. After referencing Rule 60 and providing case law almost directly on point, the Circuit Court denied the relief Appellant requested from the Court.

Appellant would respectfully submit that the Circuit Court's Order was decided in error and would humbly ask that the error by Counsel for Appellant not prohibit this matter from being heard on its merits. Appellant states the following in support of its position to reverse the lower Court's default judgment.

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## STANDARD OF REVIEW

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The standard of review to be applied by a Circuit Court in an appeal of a magistrate's judgment is prescribed by S.C. Code Ann. § 18-7-170 (1976):

Upon hearing the appeal, the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. In giving judgment the court may affirm or reverse the judgment of the court below, in whole or in part, as to any or all the parties and for errors of law or fact.

In *Burns v. Wannamaker*, 281 S.C. 352, 315 S.E.2D 179 (Ct.App.1984), this Court amplified:

As is the readily apparent, Section 18-7-170 confers authority upon the Circuit Court to reverse a magistrate's findings of fact when exercising appellate jurisdiction in an appeal from a magistrate's judgment. See *Dingle v. Northwestern R. Co.*, 112 S.C. 390, 99 S.E. 828 (1919); *Redfearn v. Douglass*, 35 S.C. 569, 15 S.E. 244 (1892); cf. *Vacation Time of Hilton Head Island, Inc. v. Kiwi Corp.*, [280 S.C. 232], 312 S.E.2d 20 (Ct.App. 1984)(where the Circuit Court reversed a magistrate's findings of fact in an ejectment action.)

*Burns*, 281 S.C. at 357, 315 S.E.2d at 182.

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**LAW AND ANALYSIS**

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As mentioned previously, a default judgment was entered against Appellant, in the amount of \$7,420.00, on August 10, 2020. On that date, due to an error from a member of Counsel's staff in the calendaring of the bench trial date, Counsel did not appear at the scheduled hearing. Thus, Respondent received a default judgment in the aforementioned amount. In requesting that this ruling be reversed, Appellant relies on Rule 60 of the South Carolina Rules of Civil Procedure. Specifically, Appellant relies on Rule 60(b)(1) of the South Carolina Rules of Civil Procedure, which states in pertinent part:

**(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.** On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

**(1)** mistake, inadvertence, surprise, or excusable neglect[.] S.C. R. Civ. P. 60(b)(1).

Here, Rule 60(b)(1) refers to mistake, inadvertence, surprise, or excusable neglect in the context of seeking relief from a judgment or order. Our Court of Appeals expounded upon this Rule in the case of *Micronics v. South Carolina Dept. of Rev.*, 345 S.C. 506, 548 S.E.2d (S.C. App. 2001). In *Micronics*, Micronics, Inc. filed a request for a contested case hearing before the Administrative Law Judge Division (ALJD). *Id.* Both parties were originally served with a notice of the hearing, scheduled for May 14, 1996. *Id.* However, due to a conflict, the Administrative Law Judge (ALJ) rescheduled the hearing to May 22, 1996. *Id.* The ALJ issued an amended notice to both parties to reflect the new hearing date. Additionally, a member of the ALJ's staff spoke with Thomas Blocker, President of Micronics, and told him about the new hearing. *Id.* Unfortunately, however, Mr. Blocker

mistakenly understood the new date as June 22, 1996, and he made a note in his calendar reflecting that mistaken date. *Id.*

Due to Mr. Blocker's misunderstanding of the rescheduled date of the hearing, Micronics failed to appear at the hearing scheduled on May 22, 1996. *Id.* Due to Micronics' nonappearance, the ALJ entered a default judgment against Micronics and dismissed the case. *Id.* When Mr. Blocker received this order of dismissal, he immediately wrote to the ALJ and detailed his mistake. Mr. Blocker also requested that the ALJ reopen the case, and the ALJ denied this request. Micronics appealed to the Circuit Court, which reversed the ALJ's decision. *Id.*

In affirming the Circuit Court's decision, the Court of Appeals relied on Rule 60(b)(1) of the South Carolina Rules of Civil Procedure. *Id.* at 510. Specifically, the Court of Appeals found that, in determining whether to grant a motion under Rule 60(b), the "trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party." *Id.* at 511. In *Micronics*, the Court of Appeals highlighted the fact that Mr. Blocker had "immediately sought relief from the dismissal. *Id.* Furthermore, the Court of Appeals held that Micronics had established the existence of a meritorious defense through its prehearing statement, which outlined Micronics' case. *Id.* Lastly, the Court of Appeals held that the opposing party would "suffer no prejudice should th[e] case proceed for a determination on the merits," as the resolution of the case had not been "substantially delayed by the parties' action." *Id.* at 512.

As in *Micronics*, in the present case, Appellant made a mistake when calendaring the date of the hearing. Here, a former employee of Appellant's Counsel forgot to calendar

the date such that Appellant's Counsel did not appear at the hearing, resulting in a default judgment entered against Appellant. Similar to *Mictronics*, Appellant sought relief from its default judgment promptly after the trial judge entered the judgment. For example, the trial judge entered the default judgment against Appellant on August 10, 2020. Two days later, during that same week, Appellant realized its mistake and promptly motioned the trial judge to reconsider the default judgment. Akin to *Mictronics*, Appellant's failure to appear at the hearing amounted to a "good faith mistake of fact, and, no attempt to thwart the judicial system." *Id.*

Moreover, as in *Mictronics*, Appellant established the existence of a meritorious defense. In this case, Respondent originally filed suit against Appellant regarding the sale of an automobile. Respondent claimed that Appellant had breached its warranty to Respondent by allegedly selling Respondent a faulty automobile. In response to this filed Summons and Complaint, Appellant filed an Answer denying liability. This action by Appellant in filing its Answer remains similar to *Mictronics* in that *Mictronics*' filed a "prehearing statement outlining its... meritorious defense." *Id.* As the Court of Appeals held in *Mictronics*, a party "is not required to show an absolute defense" in order to establish a meritorious defense." *Id.* Thus, in this case, Appellant's filing of its Answer denying liability before the hearing, as with the case in *Mictronics*, remained sufficient to establish a meritorious defense.

Furthermore, similar to *Mictronics*, Respondent will "suffer no prejudice should this case proceed for a determination on the merits." *Id.* As in *Mictronics*, Appellant's prompt response in addressing the default judgment "has not... substantially delayed" the resolution of the case on its merits." *Id.* Additionally, our Courts have held that South

Carolina maintains a policy “favoring the disposition of issues on their merits rather than on technicalities. *Id.*

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**CONCLUSION**

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Thus, because Appellant made a good faith error in calendaring the date, promptly realized and attempted to remedy this error, maintained the existence of a meritorious defense, and caused no prejudice to the Respondent, the interests of justice favor allowing the case to be heard on its merits. Thus, Appellant respectfully requests this Court to reverse the decision of the lower Court and allow the case to be reopened and heard on its merits.

Respectfully submitted,

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November 30, 2021  
Greenville, South Carolina

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**SC Court of Appeals**

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**CERTIFICATE OF COUNSEL**

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The undersigned counsel for the Appellant Carolina Auto Credit/Colleen Bartona, certifies that the Final Brief of Appellant complies with Rule 211(b), SCACR.

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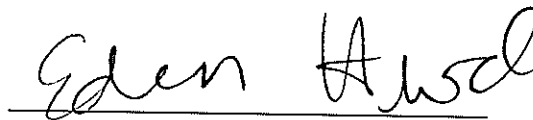
Respondent.

**APPELLATE CASE NO. 2020-001706**

**PROOF OF SERVICE**

The undersigned, Eden Hood, hereby certifies that on Tuesday, November 30, 2021, a copy of the Appellant's Proposed Amended Final Brief, was served upon Respondent, Nadira Jackson, in the above captioned matter via United States Mail, sufficient postage affixed thereon, and addressed as follows:

Nadira Jackson  
156 Taylor Chapel Road  
Columbia, SC 29203



Eden Hood  
Paralegal to Daniel J. Farnsworth, Jr.

November 30, 2021  
Greenville, South Carolina

Reginald Hoffman Pettus (1920-2000)  
John Wright Farnsworth (1941-1997)  
Daniel Joseph Farnsworth (Of Counsel)

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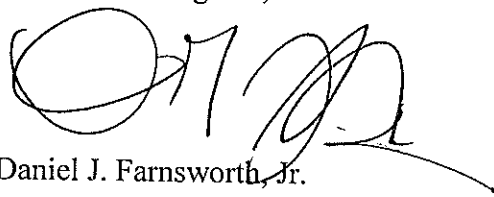
**SC Court of Appeals**

**Re: Carolina Auto Credit/Colleen Bartona v. Nadira Jackson 2020-001706**

Dear Sir or Madam,

Please find attached Appellant's Proposed Amended Final Brief for filing with the Court. Our former associate made a clerical error and failed to include the Table of Contents, Table of Authorities, Statement of Issues and Standard of Review which we have included in our proposed Final Brief. No substantive changes were made, only clerical. Should the Court approve, a bound copy will be sent via U.S. Mail.

With kindest regards,



Daniel J. Farnsworth, Jr.

DJF/eh  
enclosures