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SC Court of Appeals

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NO. 2021-CP-42-01163

CUSTOM PERFORMANCE ENGINEERING, Inc.,

AM INDUSTRIAL GROUP, LLC.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: the COURT	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

This matter is before the Court on motion of the defendant seeking relief from default.

The standard for granting relief from an entry of default is good cause under Rule 55(c), SCRPC. "This standard requires a party seeking relief from an entry of default under Rule 55(c) 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., Inc. v. Intedqe Industries, Inc.*, 383 SC 601 (2009)

It is incumbent upon the party seeking relief to "provide a satisfactory explanation for the default" otherwise the Court's inquiry ends and the motion for relief denied. *Regions Bank v. Owens*, 402 SC 642 (App 2013)

Once a party has put forth a satisfactory explanation for the default, in deciding whether "good cause" exists, the trial court should consider the following factors: (1) the timing of the defendant's motion

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for relief, (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Brothers*, 298 SC 462 (App. 1989)

This Court, mindful of the need of adherence to the applicable rules, does not take a party's failure to comply with the applicable rules governing the administration of civil lawsuits in this state lightly, but equity requires that a party who has taken reasonably appropriate measures to comply therewith should not be held to a technical and strict application of the rule where such could give rise to a significant injustice.

In this case it has been made to appear that the defendant upon being served, delivered the summons and complaint to its insurance carrier. The carrier was given an extension of time to respond and failed to take the necessary action to respond to the lawsuit and was therefore negligent in protecting the defendant's interests.

"The courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant." *Roberts v. Peterson*, 292 SC 149 (App. 1987)

Assuming the insurance company was at fault for not ensuring the complaint was answered, the defendant has failed to show "good cause". Negligence of the insurance company is imputed to a defaulting litigant and cannot constitute good cause to relieve the defendant from the entry of default absent a reasonable explanation being provided. *Richarson v. P. V., Inc.*, 383 SC 610 (2009)

There being no satisfactory explanation provided the Court excusing the default, there is no need for further consideration being given to the appropriate factors applicable to a decision to vacate a default or grant relief from it.

Based upon a consideration of the applicable law and the circumstances attendant to this case, this Court finds that the defendant's **MOTION to SET ASIDE ENTRY OF DEFAULT** should be and **IS** therefore **DENIED**.

IT IS FURTHER ORDERED and with the consent of the parties that this matter shall be **REFERRED** to the **MASTER-IN-EQUITY** for a hearing on damages pursuant to Rule 53, SCRCP.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk

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INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

