

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 24-449

SCA EFiled: Nov 18 2024
02:29PM EST
Transaction ID 75028976

HP, INC.,

Petitioner,

v.

JUDITH THOMAS,

Respondent.

Appeal from a Memorandum Opinion of the Intermediate Court of Appeals of West Virginia (No. 23-ICA-203) affirming, in part, reversing, in part, vacating, in part, and remanding a final order of the Circuit Court of Putnam County, West Virginia (21-C-142)

OPENING BRIEF OF PETITIONER HP, INC.

Counsel for Petitioner,

HP, Inc.,

Gabriele Wohl (WVSB #11132)
Patrick C. Timony (WVSB #11717)
J. Tyler Barton (WVSB #14044)
BOWLES RICE LLP
Post Office Box 1386
Charleston, West Virginia
Phone: (304) 347-1100
gwohl@bowlesrice.com
ptimony@bowlesrice.com
tyler.barton@bowlesrice.com

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
ASSIGNMENTS OF ERROR	1
STATEMENT OF THE CASE.....	3
I. <i>Introduction</i>	3
II. <i>Relevant Facts</i>	4
III. <i>Procedural History</i>	7
SUMMARY OF THE ARGUMENT	12
STATEMENT REGARDING ORAL ARGUMENT AND DECISION	14
STANDARD OF REVIEW	14
ARGUMENT	16
I. The Amended Default Judgment was void because the Circuit Court lacked subject matter jurisdiction; consequently, the ICA erred in finding that Petitioner failed to satisfy a Rule 60(b) ground.....	16
II. Despite finding that Petitioner established good cause to set aside the Amended Default Judgment under <i>Hardwood Group</i> , the ICA erred in holding that Petitioner did not satisfy a Rule 60(b) ground warranting a setting aside of the Amended Default Judgment.	22
III. The ICA erred in remanding the issue of punitive damages to the Circuit Court for further consideration.	24
CONCLUSION.....	26

TABLE OF AUTHORITIES

RULES

W. VA. R. CIV. P. 55(C)	15
W. VA. R. CIV. P. 60(B)	23

STATUTES AND CONSTITUTIONAL PROVISIONS

W. VA. CONST. Art. 8, § 6	16
W. VA. CODE § 46-2-719	19, 20
W. VA. CODE § 50-2-1	21
W. VA. CODE § 51-2-2	16, 20

CASES

<i>Amoruso v. Commerce & Indus. Co.</i> , 826 S.E.2d 642 (W. Va. 2019)	14
<i>Antero Res. Corp. v. Directional One Servs. Inc. USA</i> , 873 S.E.2d 832 (W. Va. 2022)	17
<i>Appalachian Leasing, Inc. v. Mack Trucks, Inc.</i> , 765 S.E.2d 223 (W. Va. 2014)	19
<i>Bartles v. Hinkle</i> , 472 S.E.2d 827 (W. Va. 1996)	21
<i>Bennett v. Dove</i> , 277 S.E.2d 617 (W. Va. 1981)	17
<i>Cales v. Wills</i> , 569 S.E.2d 479 (W. Va. 2002)	15
<i>Chancellor Senior Mgmt, Ltd. v. McGraw</i> , 873 S.E.2d 811 (W. Va. 2022)	17
<i>Cnty. Com’n of Wood Cnty. v. Hanson</i> , 415 S.E.2d 607 (W. Va. 1992)	15
<i>Constellium Rolled Products Ravenswood, LLC v. Griffith</i> , 775 S.E.2d 90 (W. Va. 2015)	16
<i>Con’t Assur. Co. v. Sickels</i> , 252 N.E.2d 439 (Ind. App. Ct. 1969)	24
<i>Cyril v. Neighborhood P’Ship II Housing Dev. Fund, Inc.</i> , 124 F. App’x 26 (2d Cir. 2005)	24
<i>Easterling v. Am. Optical Corp.</i> , 529 S.E.2d 588 (W. Va. 2000)	16

<i>Ennis v. Brawley</i> , 16 S.E.2d 621 (W. Va. 1946)	25
<i>Evans v. Holt</i> , 457 S.E.2d 515 (W. Va. 1995)	15
<i>Farm Family Mut. Ins. Co. v. Thorn Lumber Co.</i> , 501 S.E.2d 786 (W. Va. 1998)	15
<i>Flint v. Hewlett-Packard Co.</i> , No. 3:10-cv-597, 2011 WL 6152958 (W.D. Ky. Dec. 12, 2011)	19, 20
<i>Games-Neely ex rel. W. Va. State Police v. Real Prop.</i> , 565 S.E.2d 358 (W. Va. 2002)	14
<i>Garnes v. Fleming Landfill, Inc.</i> , 413 S.E.2d 897 (W. Va. 1991)	24
<i>Great Divide Ins. Co. v. Carpenter ex rel. Reed</i> , 79 P.3d 599 (Alaska 2003)	25
<i>Hamilton Watch Co. v. Atlas Container, Inc.</i> , 190 S.E.2d 779 (W. Va. 1972)	23
<i>Hardwood Group v. LaRocco</i> , 219 W. Va. 56, 631 S.E.2d 614 (2006)	<i>passim</i>
<i>Hayseeds, Inc. v. State Farm Fire & Cas.</i> , 352 S.E.2d 73 (W. Va. 1986)	25
<i>Intercity Realty Co. v. Gibson</i> , 175 S.E.2d 452 (W. Va. 1970)	14, 15
<i>Jan-Care Ambulance Serv., Inc. v. Pub. Serv. Comm’n of W. Va.</i> , 522 S.E.2d 912 (W. Va. 1995)	16
<i>Kaufman v. United States</i> , 84 F. Supp. 3d 519 (S.D. W. Va. 2015)	18
<i>Ky. Fried Chicken of Morgantown, Inc. v. Sellaro</i> , 214 S.E.2d 823 (W. Va. 1975)	20
<i>Leshore v. Cnty. of Worcester</i> , 945 F.2d 471 (1st Cir. 1991)	24
<i>Lovern v. Edwards</i> , 190 F.3d 648 (4th Cir. 1999)	18
<i>Miller v. St. Joseph Recovery Ctr., LLC</i> , 874 S.E.2d 345 (W. Va. 2022)	17
<i>O’Brien v. Snodgrass</i> , 16 S.E.2d 621 (W. Va. 1941)	25
<i>Parsons v. Consolidated Gas Supply Corp.</i> , 256 S.E.2d 758 (W. Va. 1979)	23
<i>Pate v. Young</i> , Civil Action No. 5:19-cv-00600, 2022 WL 1043692 (S.D. W. Va. Mar. 4, 2022)	18

<i>Patterson v. Patterson</i> , 277 S.E.2d 709 (W. Va. 1981)	17
<i>Peters v. Rivers Edge Min., Inc.</i> , 680 S.E.2d 791 (W. Va. 2009)	16
<i>Schweppes U.S.A. Ltd. v. Kiger</i> , 214 S.E.2d 867 (W. Va. 1975)	16
<i>State ex rel. Barden & Robeson Corp. v. Hill</i> , 539 S.E.2d 106 (W. Va. 2000)	16
<i>State ex rel. Dept. of Health & Human Res. Ex rel. Schwab v. Schwab</i> , 526 S.E.2d 327 (W. Va. 1999)	15
<i>State ex rel. Hammond v. Worrell</i> , 106 S.E.2d 521 (W. Va. 1958)	17
<i>State ex rel. TermNet Merchant Services, Inc. v. Jordan</i> , 619 S.E.2d 209 (W. Va. 2005)	17
<i>State ex rel. United Mine Workers of Am., Local Union 1938 v. Waters</i> , 489 S.E.2d 266 (W. Va. 1997)	15, 23
<i>State ex rel. Universal Underwriters Ins. Co. v. Wilson</i> , 801 S.E.2d 216 (W. Va. 2017)	16
<i>United Bank v. E. Coast Right of Way Maintenance, Inc.</i> , No. 2:19-cv-00473, 2019 WL 7290072 (S.D. W. Va. Dec. 27, 2019)	20, 21
<i>United States v. Autumn Ridge Condominium Ass’n, Inc.</i> , 265 F.R.D. 323 (N.D. Ind. 2009)	25
<i>Warden v. Bank of Mingo</i> , 341 S.E.2d 679 (W. Va. 1985)	25

OTHER AUTHORITIES

Louis J. Palmer, Jr. & Robin Jean Davis, LITIGATION HANDBOOK ON WEST VIRGINIA RULES OF CIVIL PROCEDURE (5th ed. 2017)	15
---	----

ASSIGNMENTS OF ERROR

On November 27, 2022, the Circuit Court awarded *pro se* Respondent, Judith Thomas, \$43,638.25 in an Amended Default Judgment for a dispute involving a laptop computer purchased by Respondent for approximately \$1,500.00 and an instant ink subscription service that charged Respondent just \$213.92. The Circuit Court awarded Respondent \$1,597.28 for the cost of the allegedly defective laptop; \$1,309.92 for Respondent’s purchase of a replacement laptop; \$425.00 for Petitioner’s allegedly unauthorized and excessive charges; \$12,175.72 for Respondent’s annoyance and inconvenience; \$20,000.00 in punitive damages; and \$8,800.00 in attorney’s fees.

On January 19, 2023, Petitioner HP, Inc. (“HP”) filed a Rule 60(b) motion to vacate and/or set aside the Circuit Court’s Amended Default Judgment. The Circuit Court denied HP’s motion, reasoning that it had not established good cause to set aside the Amended Default Judgment under Syllabus Points 3–5 of *Hardwood Group v. LaRocco*, 219 W. Va. 56, 631 S.E.2d 614 (2006), that HP did not establish excusable neglect warranting the setting aside of the Amended Default Judgment, that HP failed to establish any issues of material fact or meritorious defenses, that it had subject matter jurisdiction over Respondent’s Complaint, that Respondent was entitled to seek compensatory, consequential, incidental, and punitive damages, and that Respondent—a *pro se* litigant—was entitled to an award of attorney’s fees.

HP appealed the Circuit Court’s order denying its Rule 60(b) motion to the West Virginia Intermediate Court of Appeals (the “ICA”). On June 13, 2024, the ICA entered a Memorandum Decision affirming, in part, reversing, in part, and vacating, in part, the Circuit Court’s order denying HP’s Rule 60(b) motion and remanding this matter to the Circuit Court for further proceedings. In its Memorandum Decision, the ICA made three reversible errors:

1. Despite correctly finding that HP established good cause under Syllabus Point 3 of *Hardwood Group v. LaRocco*, the ICA erroneously held that HP failed to establish

a Rule 60(b) ground warranting a setting aside and/or vacation of the Amended Default Judgment.

2. The ICA erroneously remanded the issue of punitive damages to the Circuit Court because Respondent never requested punitive damages in her Complaint, and the factual record before the Circuit Court, nevertheless, could not support an award of punitive damages.
3. Finally, the ICA erred in finding that the Circuit Court possessed subject matter jurisdiction because, as a matter of law, Respondent's claims, even if meritorious, fell below the jurisdictional threshold of West Virginia Code § 51-2-2.

This Court should reverse, in part, the ICA's Memorandum Decision, vacate the Circuit Court's Amended Default Judgment, and remand this action to the Circuit Court for further proceedings.

STATEMENT OF THE CASE

I. Introduction

This appeal arises from the Circuit Court’s award of \$43,638.25 in an Amended Default Judgment for a dispute involving a laptop computer purchased by Respondent for approximately \$1,500.00 and an instant ink subscription service that charged Respondent just \$213.92. The Amended Default Judgment failed to account for the valid, bargained-for limitation of damages provisions set forth in Petitioner’s HP Services Agreement and HP Instant Ink Services Agreement (collectively, the “HP Agreements”), which limited Respondents’ damages to an amount that did not exceed the statutory jurisdictional threshold of \$7,500.00. Notwithstanding, the Amended Default Judgment also erroneously awarded Respondent \$8,800.00 in attorney’s fees and \$20,000.00 in punitive damages. These errors warranted a vacation, and/or setting aside, of the Circuit Court’s Amended Default Judgment for good cause. Yet, the Circuit Court denied Petitioner’s Motion to Set Aside, standing firm on the erroneous bases for its award to Respondent.

On appeal, the ICA agreed that HP “successfully demonstrated good cause” to set aside the Amended Default Judgment. Yet, it upheld the Amended Default Judgment—which was erroneous in numerous respects—because, it held, HP failed to establish a ground to set it aside under Rule 60(b) of the West Virginia Rules of Civil Procedure. Additionally, even though the ICA agreed that the Circuit Court abused its discretion in awarding Respondent punitive damages—which the ICA acknowledged Respondent “did not expressly seek in her complaint (which she never sought to amend)” —the ICA vacated the Circuit Court’s award of punitive damages and remanded the issue “for further proceedings as necessary to consider punitive damages.” The ICA also held that Respondent’s Complaint satisfied the \$7,500.00 jurisdictional threshold under West Virginia Code § 51-2-2(b), despite the uncontroverted facts that this dispute, again, concerns a \$1,500 laptop and Instant Ink subscription charges equaling just \$213.92. The

agreements forming the basis of Respondent's claims plainly limited her damages to an amount that could not have exceeded the statutory jurisdictional threshold.

This Court should vacate and set aside the Amended Default Judgment in its entirety and remand this action to the Circuit Court so that Respondent's claims can be adjudicated on the merits. At a minimum, though, this Court should reverse the ICA's decision to remand the issue of punitive damages to the Circuit Court and bar Respondent from seeking punitive damages against Petitioner, which she never requested in her Complaint.

II. Relevant Facts

Respondent purchased an HP laptop from a Best Buy on July 15, 2019, for \$1,527.98. [JA at p. 26.] Respondent alleged that a year after she purchased the laptop, she also purchased a three (3)-year extended warranty from Petitioner (the "Extended Warranty"). [JA at p. 26.] In purchasing the Extended Warranty, Respondent entered into an HP Support Services Agreement ("HP Services Agreement"). [JA at pp. 150-55.] Critically, the HP Services Agreement outlined limitations of Petitioner's express and limited warranties:

3. Limited Warranty: WE PROVIDE A LIMITED WARRANTY AGAINST DEFECTS IN HARDWARE MATERIALS AND WORKMANSHIP FOR 90 DAYS AFTER RETURN OF THE HP PRODUCT TO YOU OR FOR THE REMAINING TERM OF THIS AGREEMENT, WHICHEVER IS LONGER, FOR REPLACEMENT PARTS PROVIDED TO MAINTAIN HP HARDWARE PRODUCTS SERVICES UNDER THIS AGREEMENT IF WE RECEIVE NOTICE OF DEFECTIVE HARDWARE REPLACEMENT PARTS DURING THE TERM OF THIS AGREEMENT, WE WILL, AT OUR OPTION, REPAIR OR REPLACE THE REPLACEMENT PART(S) THAT PROVE TO BE DEFECTIVE. THE ABOVE LIMITED WARRANTY IS EXCLUSIVE AND NO OTHER WARRANTY, WHETHER WRITTEN OR ORAL, IS EXPRESSED OR IMPLIED. TO THE EXTENT PERMITTED BY LAW, WE SPECIFICALLY DISCLAIM THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. SOME

STATES DO NOT ALLOW A LIMITATION OF IMPLIED WARRANTIES FOR CONSUMER PRODUCTS OR OF A CONSUMER'S STATUTORY RIGHTS. IN SUCH STATES SOME EXCLUSIONS OR LIMITATIONS OF THIS LIMITED WARRANTY MAY NOT APPLY TO ANY IMPLIED WARRANTIES THAT MAY BE IMPOSED BY LAW ARE LIMITED IN DURATION TO THE WARRANTY PERIOD.

[JA at p. 151, § 3 (emphasis added).] The HP Services Agreement also limited a purchaser's recovery to either the cost of repair or replacement value of the laptop and excluded recovery of any consequential or special damages.

THE TOTAL AMOUNT THAT HP WILL PAY FOR REPAIRS OR REPLACEMENT MADE IN CONNECTION WITH ALL CLAIMS ON ANY COVERED PRODUCT SHALL NOT EXCEED THE PURCHASE PRICE OF THE COVERED PRODUCT EXCLUDING TAX AND SHIPPING

FOR ANY BREACH OF THIS AGREEMENT BY US, YOUR REMEDY AND OUR LIABILITY WILL BE LIMITED TO A REFUND OF THE PRICE PAID FOR THIS AGREEMENT BY YOU FOR THE HP PRODUCTS AT ISSUE. WE WILL NOT BE LIABLE FOR PERFORMANCE DELAYS OR FOR NONPERFORMANCE DUE TO CAUSES BEYOND ITS REASONABLE CONTROL, INCLUDING WHEN PRODUCT OR PARTS ARE NOT AVAILABLE. TO THE EXTENT THAT WE ARE HELD LEGALLY LIABLE TO YOU, OUR LIABILITY IS LIMITED . . . FOR OTHER DIRECT DAMAGES FOR ANY CLAIM BASED ON A MATERIAL BREACH OF SUPPORT SERVICES UP TO A MAXIMUM OF THE SUPPORT CHARGES YOU PAID FOR THIS AGREEMENT FOR THE HP PRODUCTS AT ISSUE. **THE REMEDIES PROVIDED IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES. EXCEPT AS INDICATED ABOVE, IN NO EVENT WILL WE . . . BE LIABLE FOR LOSS OF DATA OR FOR DIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING DOWNTIME COSTS OR LOST PROFIT), OR OTHER DAMAGES WHETHER BASED IN CONTRACT, TORT OR OTHERWISE.**

[JA at p. 154, § 6 (emphasis added).]

During the extended warranty period, Respondent claimed that her laptop malfunctioned, which led her to make a warranty claim on May 10, 2021, which Respondent alleged Petitioner

wrongfully denied. [JA at p. 27, ¶ 7.] Based on this conduct, Respondent alleged claims for breach of express and implied warranties and claimed damages for the replacement costs of the laptop, along with consequential damages for “loss of use, loss of data, business interruption, [and] annoyance and inconvenience.” [JA at pp. 27-28.]

In addition to her breach of warranty claim, Respondent made a claim for breach and misrepresentation concerning services she received from HP’s Instant Ink. [JA at pp. 28-29, ¶¶ 15-22.] Respondent asserted that she paid Petitioner between \$19.99 and \$24.95 to allow her to print up to 700 pages per month, with unused pages rolling over. [JA at p. 28, ¶ 16.] Respondent decreased her package and claimed that Petitioner inappropriately took her rollover pages, which required Respondent to purchase a higher cost plan. [JA at pp. 28-29.] Respondent further alleged that she attempted to cancel the plan after her laptop issues, but Petitioner refused to cancel for two months. [JA at p. 29, ¶ 21.]

Like the limitations contained in the HP Service Agreement, HP Instant Ink also provided Terms of Service (“HP Instant Ink Services Agreement”). [JA at pp. 156-66.] The HP Instant Ink Terms of Service contained a limitation of liabilities and remedies clause.

IF YOU ARE IN ANY WAY DISSATISFIED WITH THE SERVICE OR ANY PART THEREOF INCLUDING, BUT NOT LIMITED TO, A SERVICE PLAN, PROMOTION OR THE SITE, TO THE FULLEST EXTENT PERMITTED BY LAW, YOUR SOLE AND EXCLUSIVE REMEDY IS TO DISCONTINUE USING THE SERVICE AND/OR THE APPLICABLE HP SERVICE PLAN. TO THE FULLEST EXTENT PERMITTED BY LAW, IN NO EVENT WILL HP, ITS SUCCESSORS, OR AFFILIATES BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING BUT NOT LIMITED TO DOWNTIME COSTS, LOST PROFIT, LOST REVENUE OR LOST DATA OR OTHER CONTENT) OR OTHER DAMAGES ARISING OUT OF OR IN ANY WAY RELATED TO THE SERVICE, SUBSCRIPTION, CARTRIDGES, HP INSTANT INKS, OR THE SITE, WHETHER BASED IN CONTRACT, TORT, STATUTE OR ANY OTHER

LEGAL THEORY, EVEN IF HP, ITS SUCCESSORS, OR AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF THE REMEDY FAILS OF ITS ESSENTIAL PURPOSE. WITHOUT LIMITING THE FOREGOING, TO THE EXTENT HP, ITS SUCCESSORS, OR AFFILIATES ARE HELD LEGALLY LIABLE TO YOU, HP'S, ITS SUCCESSORS', AND AFFILIATES' AGGREGATE MAXIMUM LIABILITY TO YOU IS LIMITED TO THE AMOUNT OF YOUR MONTHLY FEE PAID BY YOU TO HP FOR THE SERVICE AND/OR A SERVICE PLAN FOR THE ONE MONTH PERIOD IMMEDIATELY PRECEDING THE DATE ON WHICH YOUR CLAIM AROSE OR SUCH AMOUNT AS IS THE MINIMUM AMOUNT ALLOWABLE AS SUCH A LIMIT ON LIABILITY. TO THE FULLEST EXTENT PERMITTED BY LAW, THE REMEDIES PROVIDED IN THIS AGREEMENT ARE YOUR SOLE AND EXCLUSIVE REMEDIES.

[JA at p. 163, § 11.c (emphasis added).] The HP Instant Ink Services Agreement also set out the terms and limitations of the accumulation of rollover pages. [JA at p. 160, § 6.d.] Unsurprisingly to anyone that reviewed the HP Instant Ink Services Agreement, reducing the monthly subscription services also reduces the maximum carryover of rollover pages. [JA at p. 160, § 6.d.] Nevertheless, Respondent claimed that Petitioner misrepresented this portion of the HP Instant Ink Services Agreement.

III. Procedural History

Respondent filed her Complaint with the Circuit Court, initiating this civil dispute, on September 2, 2021. [JA at pp. 26-29.] On September 13, 2021, Respondent served the Complaint and Summons through the West Virginia Secretary of State on Petitioner's registered agent, CT Corporation. [JA at pp. 167-69.] By mistake, the Complaint was internally routed to Petitioner's Executive Customer Relations division, rather than its legal department. [JA at p. 170, ¶ 4.] Gehrig Chatfield oversaw this division, which typically consists of small claims. [JA at p. 170, ¶ 5.] At the time service of the Complaint occurred, unfortunately, Mr. Chatfield had taken an

unexpected leave of absence due to a life-threatening medical issue. [JA at p. 170, ¶ 6.] As Petitioner scrambled to find a suitable temporary replacement, the Complaint was overlooked and not sent to legal, which caused Petitioner to not respond. [JA at p. 171, ¶¶ 7-8.]

On January 1, 2022, the Circuit Court set a scheduling conference. [JA at p. 32.] The clerk attempted to notice Petitioner of this conference, but Petitioner never received the notice.¹ [JA at p. 33.] On February 28, 2022, Respondent moved for default judgment and sought replacement costs of her laptop, compensatory damages of \$15,000, her own attorneys' fees and punitive damages of \$25,000.00.² [JA at pp. 34-36.] On May 2, 2022, Respondent filed a memorandum in support of her default motion. [JA at pp. 66-80.] In the memorandum, Respondent clarified that she requested default for: "(1) breach of the factory and extended warranties; (2) breach of the implied warranty of merchantability; (3) breach of the implied warranty of fitness for a particular purpose; and (4) tortious misrepresentation of HP's warranties and Instant Ink subscription service." [JA at p. 66.] In the memorandum, Respondent admitted that she advised HP representatives from the outset that, "with the disastrous failure of two new HP laptops and her daily reliance upon a computer for business purposes, she could no longer afford to rely on an HP product and was seeking a purchase price refund" [JA at p. 69 (emphasis added).]

The Circuit Court held a hearing on Respondent's motion for default judgment on July 29, 2022, and, following the hearing, on October 21, 2022, the Circuit Court entered default judgment against Petitioner. [JA at pp. 110-16.] About a month later, on November 27, 2022, the Circuit Court entered its Amended Default Judgment. [JA at pp. 10-16.] In the Amended Default Judgment Order, the Circuit Court awarded Respondent compensatory damages of \$14,507.92,

¹ The docket is replete with instances of attempted service by the clerk of various procedural filings, none of which Petitioner received. [JA at pp. 33, 65, 82, 117-18, 265-67.]

² Respondent filed subsequent motions for default judgment after February 28, 2022.

which consisted of the replacement costs of a laptop, as well as damages for Plaintiff's annoyance and inconvenience and loss of use. This Court also awarded Respondent, a *pro se* litigant, attorneys' fees and costs, along with punitive damages of \$20,000.00.³ [JA at pp.15-16.] In all, the Circuit Court awarded Respondent \$43,638.25 in damages with post-judgment interest, all for a dispute arising out of Respondent's purchase of an approximately \$1,500.00 laptop computer.

On January 10, 2023, Petitioner received a copy of the Amended Default Judgment through its attorney-in-fact. [JA at p. 120.] Petitioner immediately contacted and retained undersigned counsel, who moved the Circuit Court, on January 19, 2023, to vacate and/or set aside its Amended Default Judgment. [JA at pp. 128-29.] Citing Rule 60(b)(1) and 60(b)(4), Petitioner argued in its Motion to Set Aside that the Amended Default Judgment should be vacated and/or set aside because, among other reasons, (1) the Circuit Court lacked subject matter jurisdiction over Respondent's claims insofar as the statutory amount-in-controversy threshold had not been pleaded nor could be met given the limitations on damages outlined in the HP Services Agreement and HP Instant Ink Agreement, (2) the Amended Default Judgment erroneously awarded Respondent, a *pro se* litigant, attorney's fees, and (3) the Amended Default Judgment erroneously awarded Respondent punitive damages. [JA at pp. 131-49.]

Respondent responded to Petitioner's Motion to Set Aside on March 14, 2023. [JA at pp. 182-95.] In her response, Respondent argued (1) that Petitioner had not established sufficient grounds pursuant to Rule 60(b) of the West Virginia Rules of Civil Procedure to vacate the Circuit Court's Amended Default Judgment, (2) that the West Virginia Consumer Credit Protection Act (the "WVCCPA") precluded vacation of the Court's Amended Default Judgment, and (3) that the

³ Respondent is a licensed West Virginia attorney that chose to represent herself in this action.

WVCCPA supported the Circuit Court’s award of punitive damages and attorney’s fees. [JA at pp. 184-94.]

Petitioner filed its reply to Respondent’s response on March 15, 2023. [JA at pp. 199-207.] In its reply, Petitioner pointed out that Respondent, under the facts of this case, is not a “consumer” within the meaning of the WVCCPA and never pleaded any claims under the WVCCPA. Respondent also argued that Respondent failed to address the substantive arguments made by Petitioner regarding the Circuit Court’s award of punitive damages and attorney’s fees. [JA at pp. 199-204.]

A hearing was held on March 17, 2023, before the Circuit Court on Petitioner’s Motion to Set Aside. [JA at pp. 227-63.] During the hearing, the Circuit Court heard the arguments of counsel and the *pro se* Respondent. The Circuit Court indicated at the hearing that it would be denying Petitioner’s Motion to Set Aside and explained its rationale for its ruling. [JA at pp. 248-66.] The Circuit Court entered its Order Denying HP’s Motion to Set Aside Default Judgment on April 26, 2023. [JA at pp. 18-24.] In its Order, the Circuit Court found that Petitioner had failed to show good cause, warranting a vacation of the Circuit Court’s Amended Default Judgment. Notably, the Circuit Court—in a one-sentence paragraph—stated that Petitioner’s “contention that [Respondent], as a *pro se* litigant, cannot recover attorney’s fees, while arguably an issue for appeal if [Petitioner] had defended this action, is not the type of mistake that can serve as the basis for setting aside the *Default Judgment* under Rule 60(b).” [JA at p. 24.] The Circuit Court made this holding, despite the numerous other issues with the Amended Default Judgment.

On May 25, 2023, Petitioner filed a Notice of Appeal concerning the Circuit Court’s order denying its Motion to Set Aside. [JA at p. 268.] Petitioner filed its Opening Brief on August 28, 2023. [JA at p. 269.] In its Opening Brief, Petitioner argued that the ICA should have reversed

the Circuit Court’s order denying Petitioner’s Motion to Set Aside because, among other things, the Circuit Court lacked subject matter jurisdiction to adjudicate Respondent’s claims, [JA at pp. 287-91], the Amended Default Judgment’s award of attorneys’ fees and punitive damages were erroneous, [JA at pp. 291-93], and the other *Hardwood Group* factors supported setting aside the Amended Default Judgment, [JA at pp. 293-96]. Respondent filed her brief on October 13, 2023. [JA at p. 299.] In her brief, Respondent maintained that the Circuit Court properly awarded her default judgment and damages, and that no basis existed for the ICA to set aside any portion of the Circuit Court’s prior award. [JA at p. 319-34.] HP timely submitted its Reply Brief. [JA at pp. 336-58.]

The ICA entered its Memorandum Decision on June 13, 2024. [JA at p. 1.] In its Memorandum Decision, the ICA made four holdings, three of which are relevant for purposes of this appeal.⁴ First, the ICA held that the Circuit Court had subject matter jurisdiction over Respondent’s claims because her complaint alleged \$10,000.00 in damages. [JA at p. 4.] The ICA reasoned that complaints are to be construed in the light most favorable to the plaintiff, and circuit courts retain jurisdiction where complaints contain sufficient allegations that could support the amount in controversy. [JA at p. 4.] Thus, the ICA held that the Circuit Court’s Amended Default Judgment was not void under Rule 60(b)(4).

Second, the ICA agreed with Petitioner that it had established good cause under *Hardwood Group v. LaRocco*, but ultimately held that Petitioner failed to demonstrate a Rule 60(b) ground for setting aside the Amended Default Judgment. [JA at pp. 4-6.] The ICA reasoned that Petitioner “is a large business equipped with the financial resources to have sufficient staff and policies and

⁴ In addition to the holdings at issue in this appeal, the ICA held that the Circuit Court erred in awarding Respondent, a *pro se* litigant, attorney’s fees in the Amended Default Judgment. Petitioner does not appeal this portion of the ICA’s Memorandum Decision.

procedures in place to handle important documents,” such as legal process. [JA at p. 6.] To this end, the ICA held that Petitioner failed to establish excusable neglect as a Rule 60(b) ground to set aside the Amended Default Judgment. [JA at p. 6.]

Finally, the ICA agreed that the Circuit Court abused its discretion in awarding Respondent punitive damages. [JA at pp. 7-8.] Yet, despite acknowledging that Respondent never requested punitive damages in her Complaint, and despite the fact that Respondent never sought to amend her Complaint, the ICA remanded the issue of punitive damages to the Circuit Court for further consideration. [JA at 8.]

SUMMARY OF THE ARGUMENT

The Circuit Court awarded Respondent \$43,638.25 in an Amended Default Judgment for a dispute involving a laptop computer purchased by Respondent for approximately \$1,500.00 and an instant ink subscription service that charged Respondent just \$213.92. The Circuit Court awarded Respondent \$1,597.28 for the cost of the defective laptop, \$1,309.92 for Respondent’s purchase of a replacement laptop, \$425.00 for Petitioner’s unauthorized and excessive charges and \$12,175.72 for Respondent’s annoyance and inconvenience. These damages were awarded despite the valid, bargained-for limitation of damages provisions set forth in two relevant agreements between Petitioner and Respondent that limited Respondent’s recovery to an amount that could not have met the statutory jurisdictional amount-in-controversy threshold for the Circuit Court to adjudicate Respondent’s Complaint. Additionally, inclusive in the Circuit Court’s award was an award of \$8,800.00 in attorney’s fees to Respondent, a *pro se* litigant, and \$20,000.00 in punitive damages.

In awarding its Amended Default Judgment, the Circuit Court failed to evaluate or consider whether it possessed subject matter jurisdiction to adjudicate Respondent’s claims. The evidence presented established that Respondent valued her HP laptop at \$1,527.98 and eight (8) months of

HP's Instant Ink services at \$213.92. Against this evidence, the Circuit Court erred when it failed to evaluate its subject matter jurisdiction against the limitation of damages that applied to both of Respondent's claims under the HP Agreements. Without subject matter jurisdiction, the Amended Default Judgment was void. The void judgment should have been set aside by the Circuit Court.

In its Memorandum Decision, the ICA erroneously ratified the Circuit Court's void Amended Default Judgment, ignoring the crucial preference of our judicial system that cases be adjudicated on their merits. The ICA held that Petitioner established good cause to set aside the Amended Default Judgment. Petitioner agrees. Despite this, the ICA held that it was not excusable neglect under Rule 60(b)(1) for Petitioner to miss the deadline to answer Respondent's Complaint where a critical employee endured a life-threatening medical issue, and Respondent's Complaint was, unfortunately, overlooked. The ICA also held that the Amended Default Judgment was not void for lack of subject matter jurisdiction under Rule 60(b)(4) where this dispute concerns an approximately \$1,500 laptop and \$213.92 in charges for Respondent's Instant Ink subscription, and where Respondent's damages were subject to, and governed by, her contracts with Petitioner. These contracts plainly limited Respondent's damages to an amount that fell far below the Circuit Court's jurisdictional threshold.

The ICA also vacated the punitive damages portion of the Circuit Court's Amended Default Judgment. The ICA reasoned that the Circuit Court "failed to conduct the required analysis regarding its punitive damages award," and, therefore, "abused its discretion when it refused to set aside its punitive damages award." But, instead of instructing the Circuit Court that Respondent could not be awarded punitive damages, the ICA kicked this issue back to the Circuit Court for further consideration. Respondent never sought punitive damages in her Complaint. Respondent also never sought to amend her Complaint to seek punitive damages. The ICA erred in remanding

the issue of punitive damages to the Circuit Court for further consideration. Instead, it should have instructed the Circuit Court to refrain from awarding punitive damages, which Plaintiff never requested in her Complaint.

For all these reasons, this Court should reverse, in part, the ICA's Memorandum Decision, set aside the Amended Default Judgment in its entirety, and remand this case to the Circuit Court to proceed to an adjudication on the merits. Alternatively, at the very least, this Court should reverse the ICA's decision to remand the issue of punitive damages to the Circuit Court for further consideration.

STATEMENT REGARDING ORAL ARGUMENT AND DECISION

Petitioner requests oral argument under Rule 20 of the West Virginia Rules of Appellate Procedure because this action involves an issue of first impression. Specifically, this case allows this Court to determine whether a limitation of remedies and/or damages provision in a contract applies in the event of a default or a default judgment. As argued below, subject matter jurisdiction did not exist because of the limitation on damages in the HP Service Agreement and HP Instant Ink Agreement, the contracts that Respondent based her claims on. Despite this clear, unambiguous contractual language, the Circuit Court awarded Respondent damages beyond the limits of the contract. This case presents this Court an opportunity to denote that the contractual limitations of damages and remedies apply, irrespective of a finding of default.

STANDARD OF REVIEW

I. Rule 60(b) Motion to Set Aside Default Judgment

Appellate courts review circuit courts' rulings on motions made under Rule 60(b) of the West Virginia Rules of Civil Procedure to set aside a default judgment under the abuse of discretion standard. *Amoruso v. Commerce & Indus. Co.*, 826 S.E.2d 642, 645 (W. Va. 2019). Indeed, "[a] motion to vacate a default judgment is addressed to the sound discretion of the court

and the court’s ruling on such motion will not be disturbed on appeal unless there is a showing of an abuse of discretion.” Syl. Pt. 6, *Games-Neely ex rel. W. Va. State Police v. Real Prop.*, 565 S.E.2d 358 (W. Va. 2002) (quoting Syl. Pt. 3, *Intercity Realty Co. v. Gibson*, 175 S.E.2d 452 (W. Va. 1970), *overruled on other grounds by Cales v. Wills*, 569 S.E.2d 479 (W. Va. 2002)). However, courts must remain mindful that there is a presumption in favor of the adjudication of cases upon their merits. *See Farm Family Mut. Ins. Co. v. Thorn Lumber Co.*, 501 S.E.2d 786, 789 (W. Va. 1998); *State ex rel. United Mine Workers of Am., Local Union 1938 v. Waters*, 489 S.E.2d 266, 273 (W. Va. 1997); *Evans v. Holt*, 457 S.E.2d 515, 523 (W. Va. 1995).

Rule 55(c) of the West Virginia Rules of Civil Procedure provides that “[f]or good cause shown the court may set aside entry of default [judgment] . . . in accordance with Rule 60(b).”⁵ *See W. VA. R. CIV. P. 55(c)*. In determining whether good cause exists, this Court weighs and considers four (4) factors:

- (1) [t]he degree of prejudice suffered by the plaintiff from the delay in answering;
- (2) the presence of the material issues of fact and meritorious defenses;
- (3) the significance of the interest at stake; and
- (4) the degree of intransigence on the part of the defaulting party.

Syl. Pt. 3, *Hardwood Group v. LaRocco*, 631 S.E.2d 614 (W. Va. 2006). This Court applies these factors in “a more lenient and less stringent” manner because “[p]ublic policy favors litigation results that are based on the merits of a particular case and not on technicalities. If any doubt exists as to whether relief from a default judgment should be granted, such doubt should be resolved in favor of setting aside the default judgment in order that the case may be presented on the merits.” *See Louis J. Palmer, Jr. & Robin Jean Davis, LITIGATION HANDBOOK ON WEST VIRGINIA RULES OF CIVIL PROCEDURE* § 55(c), 1286 (5th ed. 2017); *See Cnty. Com’n of Wood Cnty. v. Hanson*, 415

⁵ “The Rules of Civil Procedure pertaining to setting aside of default judgment should be liberally construed in order to provide the relief from onerous consequences of default judgments.” *See syl. pt. 3, State ex rel. Dept. of Health & Human Res. ex rel. Schwab v. Schwab*, 526 S.E.2d 327 (W. Va. 1999).

S.E.2d 607, 609 (W. Va. 1992) (“Any doubt regarding the propriety of setting aside a default judgment should be resolved in favor of granting relief . . . to examine the case on its merits.”).

II. Awards of Punitive Damages

Awards of punitive damages are reviewed *de novo* on appeal. See *Constellium Rolled Products Ravenswood, LLC v. Griffith*, 775 S.E.2d 90, 96 (W. Va. 2015) (citing Syl. Pt. 16, *Peters v. Rivers Edge Min., Inc.*, 680 S.E.2d 791 (W. Va. 2009)).

ARGUMENT

I. The Amended Default Judgment was void because the Circuit Court lacked subject matter jurisdiction; consequently, the ICA erred in finding that Petitioner failed to satisfy a Rule 60(b) ground.

The Constitution of the State of West Virginia generally confers original jurisdiction to the State’s circuit courts to preside over “all civil cases at law where the value or amount in controversy, exclusive of interest and costs, exceeds one hundred dollars unless such value or amount is increased by the Legislature[.]” W. VA. CONST. Art. 8, § 6. As codified in West Virginia Code § 51-2-2(b), the Legislature has limited the subject matter jurisdiction of circuit courts to preside over civil actions involving an amount-in-controversy, excluding interest, exceeding \$7,500.00. W. VA. CODE § 51-2-2(b).

Subject matter jurisdiction may never be waived, *State ex rel. Barden & Robeson Corp. v. Hill*, 539 S.E.2d 106, 111 (W. Va. 2000), and “can be raised at any time,” *State ex rel. Universal Underwriters Ins. Co. v. Wilson*, 801 S.E.2d 216, 223 (W. Va. 2017). Additionally, parties are not precluded from raising the lack of subject matter jurisdiction for the first time on appeal. See *Easterling v. Am. Optical Corp.*, 529 S.E.2d 588, 597 (W. Va. 2000) (citing *Jan-Care Ambulance Serv., Inc. v. Pub. Serv. Comm’n of W. Va.*, 522 S.E.2d 912, 918 n.4 (W. Va. 1995)).

“It is a fundamental principle of law that a court, to render a valid judgment or decree, must have jurisdiction both of the parties and of the subject matter and that any judgment or decree

rendered without such jurisdiction will be utterly void.” Syl. Pt. 1, *Schweppes U.S.A. Ltd. v. Kiger*, 214 S.E.2d 867 (W. Va. 1975). As this Court has explained, “[t]he urgency of addressing problems regarding subject-matter jurisdiction cannot be understated because any decree made by a court lacking jurisdiction is void.” *State ex rel. TermNet Merchant Services, Inc. v. Jordan*, 619 S.E.2d 209, 213 (W. Va. 2005) (citing Syl. Pt. 5, *State ex rel. Hammond v. Worrell*, 106 S.E.2d 521 (W. Va. 1958), *rev’d on other grounds, Patterson v. Patterson*, 277 S.E.2d 709 (W. Va. 1981)).

This dispute arises out of Respondent’s purchase of an approximately \$1,500.00 laptop computer. [JA at p. 26.] In her Complaint, Plaintiff pursues relief subject to two HP Agreements: (1) HP Service Agreement; and (2) HP Instant Ink Terms of Service. [JA at pp. 26-29, 150-166.] Both of the HP Agreements contain a limitations of damages provision. [JA at pp. 154, § 6; 163, § 11.c.] The HP Service Agreement limits damages to the recovery of either the cost of repair or replacement cost of the laptop and expressly excludes all other consequential and special damages. [JA at p. 154, § 6.] Likewise, the HP Instant Ink Terms of Service limit damages to the recovery of the subscription charge and also excludes the recovery of all consequential and special damages. [JA at p. 163, § 11.c.]

“[T]he primary goal of a court construing a contract is to ascertain and give effect to the parties’ intent.” *See Antero Res. Corp. v. Directional One Servs. Inc. USA*, 873 S.E.2d 832 (W. Va. 2022). “Where the terms of a contract are clear and unambiguous, they must be applied and not construed.” Syl. pt. 2, *Miller v. St. Joseph Recovery Ctr., LLC*, 874 S.E.2d 345 (W. Va. 2022). “[W]ords of an agreement should be given their natural and ordinary meaning, because the parties presumably used the words in the sense in which they were generally understood.” *See Chancellor Senior Mgmt, Ltd. v. McGraw*, 873 S.E.2d 811, 818 (W. Va. 2022) (quoting *Bennett v. Dove*, 277 S.E.2d 617, 619 (W. Va. 1981)).

Respondent’s claims against Petitioner were based in contract. The contracts in dispute were the HP Agreements—namely, the HP Services Agreement and the HP Instant Ink Agreement. These contracts clearly limited Respondent’s remedies and damages. The HP Services Agreement limited Respondent to the recovery of the purchase price of the laptop. [JA at p. 154, § 6.] Likewise, the HP Instant Ink Agreement limited Respondent to the recovery of the monthly fee paid to Petitioner. [JA at p. 163, § 11.c.] The Circuit Court’s Amended Default Judgment and the ICA’s Memorandum Decision ignored these clear contract damages limitations, which precluded Respondent from ever recovering any amount above the Circuit Court’s jurisdictional threshold.

In its Memorandum Decision, the ICA devoted just one paragraph to evaluate Petitioner’s subject matter jurisdiction argument. [JA at p. 4.] It concluded that Respondent’s Complaint “contain[ed] sufficient allegations that could support the amount in controversy.” [JA at p. 4.] The ICA failed to recognize, however, that Petitioner was permitted to challenge the Circuit Court’s subject matter jurisdiction at any time, *not just at the pleading stage*. But, in its Memorandum Decision, the ICA was satisfied that the Circuit Court had subject matter jurisdiction over Respondent’s claims because she adequately pled the Circuit Court’s subject matter jurisdiction in her Complaint. Indeed, our State’s federal district courts have recognized that they have an “independent duty to ensure that subject-matter jurisdiction exists.” *Kaufman v. United States*, 84 F. Supp. 3d 519, 530 (S.D. W. Va. 2015); *Pate v. Young*, Civil Action No. 5:19-cv-00600, 2022 WL 1043692, at *4 (S.D. W. Va. Mar. 4, 2022) (citing *Lovern v. Edwards*, 190 F.3d 648, 654 (4th Cir. 1999)). The Fourth Circuit, like this Court, has also explained that trial courts are “obliged to dismiss a case whenever it appears the court lacks subject matter jurisdiction,” and that “the absence of jurisdiction may be raised at any time during the case, and may be based on the court’s review of the evidence.” *Lovern*, 190 F.3d at 654.

Respondent's claims against Petitioner, and the HP Agreements' damages limitations provisions, were subject to the West Virginia Uniform Commercial Code, as Respondent conceded, in her Motion for Default Judgment, Respondent used her HP laptop daily for business purposes. [JA at p. 69.] Under the Uniform Commercial Code, specifically, West Virginia Code § 46-2-719, "the agreement may provide for remedies in addition to or in substitution for those provided in this article and may limit or alter the measure of damages . . . as by limiting the buyer's remedies to return of the goods and repayment of the price or to repair" See W. VA. CODE § 46-2-719(a) (1963). This same provision notes that "[c]onsequential damages may be limited or excluded, unless the limitation is unconscionable. . . . [A] limitation of damages where the loss is commercial is not [*per se* unconscionable]." *Id.* at § 46-2-719(a)(3); see also *Appalachian Leasing, Inc. v. Mack Trucks, Inc.*, 765 S.E.2d 223 (W. Va. 2014). In essence, these damages limitations applied and, when applied, no subject matter jurisdiction existed for the Circuit Court because of the amount in controversy, which fell far below the Circuit Court's jurisdictional threshold of \$7,500.00.

At least one court reviewing a substantially similar HP damage limitation found it applicable in determining whether subject matter jurisdiction existed. See *Flint v. Hewlett-Packard Co.*, No. 3:10-cv-597, 2011 WL 6152958 (W.D. Ky. Dec. 12, 2011). In *Flint*, a *pro se* plaintiff made claims against HP concerning breach of warranty and fraud related to problems that plaintiff experienced with his HP printer. *Id.* at *1. In reviewing whether it possessed subject matter jurisdiction, the United States District Court for the Western District of Kentucky, *sua sponte*, reviewed the HP service agreement and noted the limitation of liability/damages section, which provided:

TO THE EXTENT ALLOWED BY LOCAL LAW, EXCEPT FOR
THE OBLIGATIONS SPECIFICALLY SET FORTH IN THIS

WARRANTY STATEMENT, **IN NO EVENT SHALL HP OR ITS THIRD PARTY SUPPLIERS BE LIABLE FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES,** WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY AND WHETHER ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Id. at *3 (emphasis added). The district court observed that the limitation of consequential damages limited plaintiff to recovering either the repair costs or the replacement costs of the printer, which fell far below the federal jurisdiction of \$75,000.00. *Id.* at *4. The lack of subject matter jurisdiction required the district court to dismiss plaintiff's complaint without prejudice. *Id.* at *6. The same analysis applies here.

Both HP Agreements contain a limitation of damages and expressly exclude the recovery of consequential and special damages. [JA at pp. 154, § 6; 163, § 11.c.] These HP Agreements limit Respondent to the recovery of either replacement or repair costs of the laptop and the subscription fee for the HP Ink service. [JA at pp. 154, § 6; 163, § 11.c.] In her Memorandum in Support of Motion for Default Judgment, Respondent explicitly recognized a value of the laptop at \$1,527.98 and HP Ink services for 8 months—\$213.92. [JA at pp. 73, 105.] Other than these damages, the UCC and the HP Agreements limit Respondent's further recovery. W. VA. CODE § 46-2-719. Yet, in clear defiance of these limitation provisions and the UCC, the Circuit Court assumed jurisdiction over Respondent's Complaint, notwithstanding the fact that Respondent's damages could never exceed the \$7,500.00 threshold to invoke subject matter jurisdiction. *See* W. VA. CODE § 51-2-2; [J.A. at pp. 10-16, 22-28.] In this same vein, the ICA was satisfied that the Circuit Court's subject matter jurisdiction was established at the pleading stage. [JA at p. 4.]

Importantly, however, to award Respondent contract damages, the Circuit Court needed Respondent to prove her damages under the HP Agreements with reasonable certainty. *Syl. pt. 2, Ky. Fried Chicken of Morgantown, Inc. v. Sellaro*, 214 S.E.2d 823 (W. Va. 1975). "When a default

judgment is awarded, a plaintiff must prove damages to a reasonable certainty and when a defendant has failed to respond, the court must make an independent determination – by relying on affidavits, documentation, or an evidentiary hearing – of the sum to be awarded as damages.” *See United Bank v. E. Coast Right of Way Maint., Inc.*, No. 2:19-cv-00473, 2019 WL 7290072, *1 (S.D. W. Va. Dec. 27, 2019). Respondent presented the Circuit Court with the HP Service Agreement that clearly delineated the limitation on certain damages.⁶ [J.A. at pp. 48-49.] Before making an award, the Circuit Court was required to undertake an independent determination of the contractual damages, which necessitated a review of the contracts on which Respondent based her claims. This independent review coincides with the Circuit Court needing to independently determine whether it possessed subject matter jurisdiction over this action. *See Bartles v. Hinkle*, 472 S.E.2d 827, 834 (W. Va. 1996) (“Of course, insofar as subject matter jurisdiction is concerned, both a trial court and an appellate court must be satisfied with their power to adjudicate in every case and at every stage of the proceedings.”). Even under the best case scenario for Respondent, these limitations, when applied to her damages claim as required under the HP Agreements, made it impossible for Respondent to satisfy West Virginia Code § 51-2-2(b) to invoke the subject matter jurisdiction of the Circuit Court.

Other than awarding Respondent for the replacement value of her laptop and the monthly fee for HP Instant Ink, no reasonably certain evidence existed for the other damages based on the clear unambiguous limitations in the HP Agreements, on which Respondent based her claims. Because Respondent lacked the ability to pursue potential damages in an amount above the Circuit Court’s jurisdictional limits, this Court should reverse the ICA’s Memorandum Decision insofar as it held that the Circuit Court’s Amended Default Judgment was not void under Rule 60(b)(4).

⁶ Respondent failed to include the HP Instant Ink Agreement with her Motion for Default.

This Court should set aside the Circuit Court’s void Amended Default Judgment and remand this matter to proceed to an adjudication on the merits.⁷

II. Despite finding that Petitioner established good cause to set aside the Amended Default Judgment under *Hardwood Group*, the ICA erred in holding that Petitioner did not satisfy a Rule 60(b) ground warranting a setting aside of the Amended Default Judgment.

The ICA agreed with Petitioner that the *Hardwood Group* factors support setting aside the Amended Default Judgment. [JA at p. 4.] The ICA explained that Respondent would not be prejudiced by setting aside the Amended Default Judgment, [JA at p. 5], that numerous issues of fact and the presence of meritorious defenses favored setting aside the Amended Default Judgment, [JA at p. 5-6], that Respondent’s claims implicated significant stakes, [JA at p. 6], and that Petitioner was “moderately, but not severely, intransigent,” [JA at p. 6].

Despite finding that each of these four factors weighed in favor of setting aside the Amended Default Judgment, the ICA declined to do so because it did not believe that Petitioner had established a Rule 60(b) ground separate and apart from the *Hardwood Group* factors. [JA at p. 6.] As explained above, the Amended Default Judgment was void for lack of subject matter jurisdiction. The voidness of the Amended Default Judgment implicates Rule 60(b)(4), and it should have been set aside on that ground.

Notwithstanding, Petitioner also adequately established another Rule 60(b) ground—excusable neglect. Petitioner established that the Summons and Complaint were internally routed to Petitioner’s Executive Customer Relations division, rather than its legal department. This division typically handled small claims against Petitioner. [JA at p. 170.] At that time, Mr.

⁷ Importantly, a reversal from this Court would not leave Respondent without a remedy. Under West Virginia Code § 50-2-1, West Virginia magistrate courts possess jurisdiction of all civil actions where the amount in controversy is not more than \$10,000.00. See W. VA. CODE § 50-2-1 (2016). Respondent, at her discretion, can refile her Complaint with the Putnam County Magistrate Court.

Chatfield, who oversaw that division, had taken an unexpected leave of absence due to a life-threatening medical issue. [JA at p. 170.] Unfortunately, the Summons and Complaint were overlooked and not forwarded to Petitioner’s legal division, which caused Petitioner to not respond to the Summons and Complaint.⁸ [JA at p. 171.]

Despite characterizing this as “moderate,” but not “severe,” intransigence, the ICA determined that Petitioner “failed to demonstrate that it had a sufficient reason for not responding to [Respondent’s] [C]omplaint in a timely manner,” and ultimately held “that excusable neglect [was] not applicable,” and that the Circuit Court “did not err when it refused [to] set aside the default judgment on th[at] basis.” [JA at p. 6.]

This Court has explained that “[i]f any doubt exists as to whether relief should be granted, such doubt should be resolved in favor of setting aside the default judgment in order that the case may be heard on the merits.” *State ex rel. United Mine Workers of America, Local Union 1938*, 489 S.E.2d at 276. This Court has also explained that Rule 60(b) “should be given a liberal construction.” Syl. Pt. 2, *Parsons v. Consolidated Gas Supply Corp.*, 256 S.E.2d 758 (W. Va. 1979) (citing Syl. Pt. 2, *Hamilton Watch Co. v. Atlas Container, Inc.*, 190 S.E.2d 779 (W. Va. 1972)). Given the fact that all four *Hardwood Group* factors supported setting aside the Amended Default Judgment, as well as the fact that the ICA determined that Petitioner’s intransigence was “moderate,” but not “severe,” the ICA should have resolved Petitioner’s appeal below in favor of setting aside the Amended Default Judgment so that Respondent’s claims could be adjudicated on the merits.

⁸ Bear in mind that the Summons and Complaint were the only filings Petitioner was ever successfully served with in this action. The docket is replete with instances of attempted service by the clerk of various procedural filings, none of which Petitioner actually received.

Instead, the ICA reasoned that, because Petitioner is “a large business equipped with the financial resources to have sufficient staff and policies and procedures in place to handle important documents,” it “failed to demonstrate that it had a sufficient reason for not responding to [Respondent’s] [C]omplaint in a timely manner.” [JA at 6.] But, Petitioner explained that the reason it did not respond to Respondent’s Complaint in a timely manner was the result of a critical employee taking an unexpected leave of absence due to a life-threatening medical issue. This critical employee, Mr. Chatfield, was who Respondent’s Complaint was internally routed to. Many courts, in a variety of jurisdictions, have found that the sudden illness of the responding party and/or their counsel constitutes excusable neglect for the failure to timely respond to a complaint. *See, e.g., Leshore v. Cnty. of Worcester*, 945 F.2d 471 (1st Cir. 1991) (affirming the setting aside of a default based on illness of the county attorney in failing to respond); *Cyril v. Neighborhood P’ship II Housing Dev. Fund, Inc.*, 124 F. App’x 26 (2d Cir. 2005). Indeed, Indiana has long recognized sickness or illness of a party as a fact that constitutes excusable neglect. *See, e.g., Con’t Assur. Co. v. Sickels*, 252 N.E.2d 439, 441 (Ind. App. Ct. 1969).

Petitioner is mindful that some degree of neglect resulted in its failing to timely respond to Respondent’s Complaint. However, when viewed together with each of the *Hardwood Group* factors, each of which the ICA agreed supported setting aside the Amended Default Judgment, Petitioner’s neglect was excusable, and the ICA should have set aside the Amended Default Judgment in its entirety. This Court should reverse the ICA’s error in refusing to do so.

III. The ICA erred in remanding the issue of punitive damages to the Circuit Court for further consideration.

Finally, Petitioner appeals the ICA’s decision to remand the issue of punitive damages to the Circuit Court for further consideration. The Circuit Court awarded Respondent \$20,000.00 in punitive damages. [JA at pp. 14-16, 22-23, 223-24, 255.] The ICA agreed with Petitioner that the

Circuit Court’s Amended Default Judgment failed to set forth its award of punitive damages pursuant to the factors set forth in *Garnes v. Fleming Landfill, Inc.*, 413 S.E.2d 897 (W. Va. 1991). [JA at p. 7-8.] The ICA also acknowledged that Respondent “did not expressly seek [punitive damages] in her [C]omplaint,” and that Respondent “never sought to amend.” [JA at p. 7.] Yet, despite the fact that Respondent did not seek punitive damages in her Complaint and did not seek the Circuit Court’s leave to amend her Complaint, the ICA remanded the issue of punitive damages to the Circuit Court for further consideration. [JA at 8.] The ICA erred in doing so.

Instead, the ICA should have vacated the Circuit Court’s award of punitive damages in its entirety and instructed the Circuit Court not to award Respondent punitive damages. This Court has explained before that, although “punitive damages need not be pleaded *eo nomine*,” a complaint “must allege that the tort pleaded was done maliciously, wantonly, willfully, or with like animus or show facts from which it may be deduced that the act complained of was so done.” *O’Brien v. Snodgrass*, 16 S.E.2d 621 (W. Va. 1941), *corrected on other grounds by Ennis v. Brawley*, 41 S.E.2d 680, 685 (W. Va. 1946). Other jurisdictions have so recognized. *Great Divide Ins. Co. v. Carpenter ex rel. Reed*, 79 P.3d 599, 611–12 (Alaska 2003) (“[A]lthough punitive damages need not be pled in a complaint, the complaint should, at a minimum, allege conduct that meets the legal standard for the award of punitive damages.”); *United States v. Autumn Ridge Condominium Ass’n, Inc.*, 265 F.R.D. 323, 326 (N.D. Ind. 2009) (“[A] plaintiff may recover punitive damages, even where it fails to specifically request the damages, if sufficient facts supporting such an award are alleged in the complaint.”).

Respondent’s Complaint did not allege any facts satisfying the legal standard to obtain an award of punitive damages. It alleged contract-based claims for Petitioner’s alleged breach of the HP Agreements. This Court has recognized that, “[g]enerally, punitive damages are unavailable

in an action for breach of contract unless the conduct of the defendant constitutes an independent, intentional tort.” *Hayseeds, Inc. v. State Farm Fire & Cas.*, 352 S.E.2d 73, 80 (W. Va. 1986); *Warden v. Bank of Mingo*, 341 S.E.2d 679, 684 (W. Va. 1985) (“Punitive damages are allowed only where there has been malice, fraud, oppression, or gross negligence. . . . [P]unitive damages are generally unavailable in pure contract actions.”).

Accordingly, because Respondent’s Complaint did not seek punitive damages, nor did it allege any facts or assert any claims that would entitle her to punitive damages, the ICA erred in remanding the issue of punitive damages to the Circuit Court for further consideration. Instead, it should have instructed the Circuit Court to not award Respondent any punitive damages in the absence of an amended complaint alleging facts and asserting tort claims that would entitle her to punitive damages. This Court should reverse this error by the ICA.

CONCLUSION

This Court should reverse, in part, the ICA’s Memorandum Decision to the extent it affirmed the Circuit Court’s Order denying Petitioner’s Motion to Set Aside and vacate and/or set aside the Circuit Court’s Amended Default Judgment. Alternatively, at a minimum, this Court should reverse the ICA’s Memorandum Decision to the extent it remanded the issue of punitive damages back to the Circuit Court for further consideration.

Respectfully submitted by,

HP, INC.,

By Counsel

/s/ Patrick C. Timony

Gabriele Wohl (WVSB #11132)

Patrick C. Timony (WVSB #11717)

J. Tyler Barton (WVSB #14044)

BOWLES RICE LLP

Post Office Box 1386

Charleston, West Virginia

Phone: (304) 347-1100

gwohl@bowlesrice.com

ptimony@bowlesrice.com

tyler.barton@bowlesrice.com

IN THE SUPREME COURT OF APPEALS OF WEST VIRGINIA

No. 24-449

HP, INC.,

Petitioner,

v.

JUDITH THOMAS,

Respondent.

Appeal from a Memorandum Opinion of the Intermediate Court of Appeals of West Virginia (No. 23-ICA-203) affirming in part, reversing in part, vacating in part, and remanding a final order of the Circuit Court of Putnam County, West Virginia (21-C-142)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this **18th day of November 2023**, the foregoing ***Opening Brief of Petitioner HP, Inc.*** was served using the electronic File & ServeXpress system, which will send notification of such filing to all counsel record.

Judith Thomas
Post Office Box 6403
Charleston, West Virginia 25362-6403
(304) 545-2637
judithpthomas835@gmail.com
Pro se Respondent

/s/ Patrick C. Timony
Patrick C. Timony (WVSB #11717)