Rel: August 21, 2026

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SUPREME COURT OF ALABAMA

SPECIAL TERM, 2026

SC-2025-0799

Ivy Fund Manager, LLC, d/b/a OC Ventures; Ivy Midtown GP, LLC; and NDG Student Living, LLC, d/b/a Varsity Campus

v.

CDH Real Estate Investment Management Company, Ltd.; Cook Summit Holding, LLC; and Cook Summit Investor, LLC

Appeal from Lee Circuit Court (CV-23-900453)

MENDHEIM, Justice.

Ivy Fund Manager, LLC, d/b/a OC Ventures; Ivy Midtown GP, LLC; and NDG Student Living LLC, d/b/a Varsity Campus[1] (collectively referred to as "Ivy"), appeal from a default judgment entered by the Lee Circuit Court in favor of CDH Real Estate Investment Management Company, Ltd.; Cook Summit Holding, LLC; and Cook Summit Investor, LLC (collectively referred to as "CDH"). We dismiss the appeal.

I. Facts

CDH is a real-estate investment firm based in China. Ivy is a real-estate investment and management firm based in Singapore. In October 2021, CDH and Ivy entered into a joint venture to own, develop, and operate Midtown Auburn, a mixed-use residential property near Auburn University. Under the agreements executed by CDH and Ivy, CDH owns approximately an 80 % interest in the joint venture, and Ivy holds approximately a 20 % interest and serves as the joint venture's manager. Because Ivy is the manager, it has unlimited access to the joint venture's bank accounts. The parties agree that the executed joint-venture agreements provide for resolution of certain disputes via

[1]Originally, Ivy Midtown LP, LLC, also was an appellant in this appeal. However, on December 19, 2025, this Court granted Ivy Midtown LP's motion for a voluntary dismissal of its appeal.

arbitration and that those agreements incorporate the American Arbitration Association's rules of arbitration.

In its complaint, CDH alleged that Ivy had used its access to the joint venture's bank accounts to make unauthorized transfers of funds to separate Ivy accounts. CDH alleged that Ivy had stolen over $1 million from those accounts and that, when CDH confronted Ivy about it, Shangxuan Tan, Ivy's CEO, told CDH that Ivy had "a practice of shifting monies between accounts to cover expenses of various properties within [Ivy's] portfolio. ... Mr. Tan admitted the transfers were wrongful, and promised CDH that the money would be repaid." However, according to CDH, only a small portion of the funds was repaid, despite numerous promises from Tan that Ivy would restore the funds to the joint venture's accounts.

On November 22, 2023, CDH commenced an action against Ivy in the Lee Circuit Court alleging that Ivy had stolen funds from CDH that were intended to be used for the joint venture. The complaint alleged four causes of action: (1) declaratory judgment to prevent Ivy from abusing the "Deadlock" provision in the joint-venture agreements, (2) fraudulent misrepresentation, (3) conversion, and (4) fraudulent suppression. CDH asserted that $935,000 in stolen funds still had not been repaid at the time the complaint was filed.

On March 8, 2024, CDH filed an "Application for Entry of Default" against Ivy on the ground that Ivy had been served with the complaint but had not pleaded or otherwise defended against the complaint. On March 15, 2024, CDH filed a "Motion for Judgment By Default" against Ivy for having failed to respond to the complaint. CDH requested $935,000 in damages. The trial court set a hearing concerning CDH's motion for a default judgment to be held on June 20, 2024.

On June 19, 2024, Ivy filed its answer to CDH's complaint. Ivy did not list arbitration among the affirmative defenses it asserted in its answer. On the same date, Ivy filed a response in opposition to CDH's motion for a default judgment. In that response, Ivy expressly stated that it did "not dispute [its] current knowledge of this litigation and [is] willing to move forward with litigation should settlement negotiations continue to prove unsuccessful." As an explanation for the delay in responding to the suit, Ivy stated that it had

> "been attempting to negotiate the underlying circumstances giving rise to this matter with [CDH] since August 2023.

> "8. Moreover, since that time, [Ivy has] apparently repeatedly informed [CDH] that [it is] attempting to liquidate property in order to acquire the funds necessary to effectuate a settlement.
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> "....
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> "10. In fact, [Ivy is] under contract to liquidate[] properties and the deals are expected to close within the next ninety (90) days, and upon informing [CDH] of this information, expected that this litigation would be dismissed upon the entry of a settlement agreement or consent judgment."

Based on the foregoing assertions, Ivy asked the trial court to deny the motion for a default judgment. Ivy did not mention arbitration in its response to CDH's motion for a default judgment. In response to Ivy's filings, the trial court reset the hearing for August 22, 2024.

On August 13, 2024, CDH filed a motion to strike Ivy's answer to the complaint. CDH contended that striking the answer and entering a default judgment was warranted because, it said, Ivy's initial "failure to answer was willful, knowing, and strategic." CDH also contended that Ivy lacked a meritorious defense to the action because Ivy "stole money from [CDH], plain and simple, and [its] criminal behavior cannot reasonably be defended on any ground. Indeed, [Ivy has] acknowledged such misconduct, repeatedly promising to pay [CDH] what [it] stole."

CDH described Ivy's answer and its response to the motion for a default judgment as "vague allusions to anticipated or potential repayment of stolen funds via settlement [and] yet another attempt by [Ivy] to cover up [its] criminal acts and avoid accountability for [its] crimes."

On September 6, 2024, the trial court denied CDH's motion for a default judgment. The trial court ordered a status conference for the case to be held on October 21, 2024. On October 25, 2024, CDH informed the trial court that it had served interrogatories, requests for admission, and requests for production upon Ivy. On November 25, 2024, the parties filed a joint motion for a scheduling order. The proposed scheduling order attached to that motion set the case for a jury trial to be held on March 3, 2025. On November 26, 2024, the trial court adopted the parties' proposed scheduling order. On December 2, 2024, Ivy informed the trial court that it had provided responses to CDH's propounded discovery. On December 4, 2024, CDH informed the trial court that it had served discovery requests seeking video depositions from Ivy, including the deposition of Tan, who also served as the designated corporate representative for Ivy.

On December 6, 2024, Ivy filed a motion for a protective order in which it stated that, "[f]ollowing this Court's adjudication of [CDH's] motion for default judgment, [Ivy has] been engaged in the defense of this litigation, the discovery process, and ongoing attempts to settle this matter in good faith and will continue in those efforts until this matter is resolved." Ivy sought a protective order concerning the manner in which the deposition of Tan was to occur. Specifically, Ivy sought to have the deposition occur via videoconferencing technology because Tan resides in Singapore, but CDH had insisted that the deposition occur in person at the offices of CDH's counsel in Montgomery.[2] Ivy argued that the accommodation of a videoconference deposition was necessary because

> "Mr. Tan is not a U.S. citizen or permanent resident, but is instead a visa holder with a business visa. Furthermore, it is Mr. Tan's understanding that the applicable immigration regulations would not allow him, as a business visa holder, to stay in the United States for more than six months out of the year, which he has already done during the calendar year 2024. Under these circumstances, it would be unreasonable and unduly burdensome to require Mr. Tan to attempt to travel to the United States to sit for these corporate depositions, and in fact, it would be logistically impossible for him to do so, given the limitations on Mr. Tan's visa privileges, the impending expiration of fact discovery on

[2]In an August 22, 2024, hearing, Ivy's counsel related to the trial court that Tan "is a Chinese national."

> December 13, 2024, and the fact that Rule 30(b)(6)[, Ala. R. Civ. P.,] depositions have been scheduled for that same day."

On December 9, 2024, CDH filed a response to Ivy's motion for a protective order in which CDH argued that Ivy had been "showing nothing but contempt for the legal process in this state." More specifically, CDH contended that "Mr. Tan provided no tangible evidence, such as a copy of his passport/visa reflecting entry stamps documenting passage into the United States, to support" his statement that he could not reenter the United States during 2024. CDH stated that it was willing to extend the deadline for scheduling deposition testimony, assuming Tan could travel to the United States in January 2025. CDH also argued that it was "critical" that Tan be deposed in person because CDH had "no confidence that [Ivy] would conduct [itself] in good faith during a remote deposition." The record does not indicate that the trial court ever ruled on Ivy's motion for a protective order.

On December 17, 2024, CDH filed its second "Motion for Judgment By Default." CDH argued that a default judgment should be entered against Ivy because of Tan's failure to appear for depositions that were properly noticed for December 13, 2024. CDH also complained that Ivy had "failed to adequately respond to [CDH's] requests for written discovery responses." CDH noted that Ivy had "provided, on December 12, 2024, at 6:48 p.m., on the eve of [the] scheduled depositions, a 'revised' set of discovery responses, [but] those revised responses did nothing to ameliorate the substantive concerns identified by [CDH] ... that the responses provided by [Ivy] were obfuscating and otherwise non-responsive." The trial court set a hearing concerning CDH's second motion for a default judgment for January 9, 2025.

On January 6, 2025, Ivy filed its response in opposition to CDH's second motion for a default judgment. Ivy described CDH's request for a default judgment based on "discovery disputes" as an "extreme remedy." Ivy argued that CDH sought the default judgment under the wrong Alabama Rule of Civil Procedure, i.e., that it sought the sanction under Rule 55, Ala. R. Civ. P., but that the proper procedure for a discovery sanction was under Rule 37, Ala. R. Civ. P., which required CDH to file a motion to compel before seeking any other sanction. Ivy added that it has

> "been actively attempting to resolve this litigation with [CDH's] counsel for some time now. Settlement offers have been discussed, but the efforts have been unsuccessful. As [CDH is] aware, [Ivy is] set to close on a transaction that should generate sufficient funds for a settlement. The closing date is January 9, 2025. [Ivy] informed [CDH] of this closing

> date and suggested to [CDH] that the upcoming hearing on this Motion should be delayed such that the parties can negotiate instead. [CDH] did not agree to a continuance. [Ivy is] hopeful that a settlement can be reached by the end of the month, regardless of the discovery disputes."

On January 8, 2025, CDH filed a reply to Ivy's response to the second motion for a default judgment. CDH attempted to finesse the differences between Rule 37 and Rule 55 and continued to insist that the trial court had discretion to grant CDH's motion for a default judgment.

Following those filings, the trial court eventually reset the hearing on CDH's second motion for a default judgment for February 19, 2025. On February 19, 2025, the trial court ordered the parties "to agree, on or before February 27, 2025, upon a date on which the disputed deposition(s) [of Tan] will take place. Said deposition(s) will ideally take place within 45 days of this date." The trial court permitted the deposition to take place in Chicago if Ivy "choose[s]," but, if that was the choice, then Ivy would be "responsible for [CDH's] counsel's travel expenses." The order provided that the trial was set for June 9, 2025.

On March 31, 2025, CDH filed a "Renewed Motion for Judgment By Default." In that motion, CDH related that it "re-noticed the deposition of [Ivy's] corporate representative for March 27, 2025, at 9:00 a.m.

Counsel for [Ivy] specifically agreed to this date. However, yet again, and unsurprisingly, on May 27th, no corporate representative on behalf of [Ivy] appeared." CDH thus concluded:

> "Everything [Ivy does] in this litigation is for the purpose of delay.[3] At this point, it is clear that neither a corporate representative for [Ivy] (nor Mr. Tan himself), have any intention of ever appearing in person for deposition. This refusal to participate in the litigation process, as [CDH has] argued before, entitles [CDH] to the Rule 37 and Rule 55 sanction of default judgment against [Ivy], for [its] willful refusal to participate in the discovery process."

(Footnote omitted.)

On April 9, 2025, Ivy filed a response in opposition to CDH's renewed motion for a default judgment. In its response, Ivy asserted that Ivy's

> "principal Mr. Tan sought to travel to the United States to appear for those depositions, but was informed by the U.S.

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[3]As part of its complaint about delay by Ivy, CDH related:

> "[CDH] and [Ivy] even seemed to have reached a settlement several weeks ago, with counsel for [Ivy] writing that 'Ivy is generally agreeable to CDH's settlement position ...' It turns out, however, that [Ivy's] purported acceptance was a farce, as counsel for [Ivy] has now confirmed that there is an essential term of the proposed settlement agreement to which it does not agree. The parties appear to be at an impasse on this critical issue; accordingly, settlement will not be possible."

(Footnote omitted.)

> Department of State several weeks before the scheduled deposition date that his visa application had been denied. [CDH's] counsel was informed by [Ivy's] counsel on March 11, 2025, well in advance of the scheduled deposition, of Mr. Tan's unavailability to travel."

In support of that assertion, Ivy attached to its response a redacted version of what it said was Tan's visa application, which indicated that it had been refused. Based on the foregoing assertion, Ivy argued that the motion should be denied because Ivy had not "willfully" failed to comply with the deposition requests or the trial court's February 19, 2025, order. Ivy also related that, because CDH had expressed the belief in its renewed motion for a default judgment that a settlement was not possible, Ivy would be "fil[ing] a motion to compel arbitration of some or all of [CDH's] claims in this suit, as well as other applicable disputes between the parties."

On April 11, 2025, CDH filed a reply to Ivy's response to the renewed motion for a default judgment. In its reply, CDH accused Tan of "working a fraud on the Court." In support of that accusation, CDH asserted that "Mr. Tan's visa to travel to the United States was issued on March 26, 2025." CDH included in its reply a screenshot of a page from the United States Department of State's website seeming to show that

Tan's visa was, in fact, issued. The website screenshot was supported by an affidavit from a paralegal employed by CDH's counsel.

On April 18, 2025, Ivy filed a "Motion to Compel Arbitration and Stay Proceedings." In that motion, Ivy asserted that the joint-venture agreements executed by the parties contained binding arbitration provisions that stated that the parties agreed to resolve any disputes through "binding arbitration in accordance with the rules of the American Arbitration Association ('AAA') as hereinafter provided in New York, New York." In support of its motion, Ivy attached copies of two contracts executed by certain parties to the dispute, along with a copy of the "Commercial Arbitration Rules and Mediation Procedures" of the American Arbitration Association ("the AAA rules").[4] The two "Limited Liability Company Agreement[s]" ("the LLC agreements") are essentially identical with respect to addressing arbitration. Both LLC agreements contain a provision that provides:

[4]One agreement -- the Limited Liability Company Agreement of Auburn Midtown GP, LLC -- was executed by Cook Summit Investor, LLC, and Ivy Midtown GP, LLC, and the other agreement -- the Limited Liability Company Agreement of Auburn Midtown JV LP, LLC -- was executed by Cook Summit Investor, LLC, and Ivy Midtown LP, LLC (see note 1, supra).

> "10.3 Arbitration. Other than with respect to Deadlocks, which shall be governed by the provisions of Section 10.1, the parties hereto have agreed to submit disputes to mandatory arbitration in accordance with the provisions of Schedule 10.3 attached hereto and made part hereof for all purposes. Each of the Members waives the right to commence an action in connection with this Agreement in any court and expressly agrees to be bound by the decision of the arbitrator determined in Schedule 10.3 attached hereto. The waiver of this Section 10.3 will not prevent any Member from commencing an action in any court for the sole purpose of enforcing the obligation of the other party to submit to binding arbitration or the enforcement of an award granted by arbitration herein."

Schedule 10.3 of the LLC agreements contains the following two paragraphs:

> "1. General. Any dispute among the Members as to the interpretation of any provision of this Agreement or the rights and obligations of any party hereunder shall be resolved through binding arbitration in accordance with the rules of the American Arbitration Association ('AAA') as hereinafter provided in New York, New York.
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> "....
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> "3. Rules of Arbitration. The Arbitrator selected pursuant to Section 1(b) above shall use the rules of AAA for commercial arbitration, [with] such modification of the rules, if any, as mutually agreed in writing by the parties to the arbitration."

On April 25, 2025, Ivy filed a "Motion to Stay Discovery and Trial Proceedings" in which it requested a stay based on its filing of the motion to compel arbitration.

On May 2, 2025, CDH filed its response in opposition to Ivy's motion to compel arbitration. In that response, CDH contended that Ivy had "waived any right to arbitration by substantially invoking the litigation process" and "ha[s] repeatedly abused it, including by committing fraud upon the Court by misrepresenting the status of Mr. Tan's Visa." CDH also argued that its claims are not subject to arbitration. CDH conceded that "the joint venture agreements contain arbitration clauses and involve interstate commerce and that the Federal Arbitration Act ('FAA') is implicated." However, CDH insisted that Ivy had waived any right to compel arbitration because it did not make an early determination to proceed by arbitration. CDH also argued that the arbitration provisions' references to the AAA rules did not encompass the issue of wavier of arbitration by conduct.

On June 18, 2025, Ivy filed a reply to CDH's response in opposition to the motion to compel arbitration. In its reply, Ivy argued that there has been no "sea change in arbitration law" and that this Court continues to adhere to the notion that "'any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration, whether the problem at hand is the construction of the contract language itself or an allegation of waiver, delay, or a like defense to arbitrability.'" (Quoting Women's Care Specialists, P.C. v. Potter, 385 So. 3d 928, 936 (Ala. 2023).) Thus, Ivy continued to contend that the issue of waiver must be decided by the arbitrator. Additionally, in its reply, Ivy finally responded to CDH's accusation that Tan's visa application was actually approved by the United States Department of State. Ivy stated:

> "Concededly, Mr. Tan appealed his visa denial by the State Department, and following the State Department's review of that appeal, Mr. Tan's visa was issued on March 26[, 2025]. That issuance, however, came too late for Mr. Tan -- who resides in Singapore -- to sit for deposition in Alabama the next day. It is true that [Ivy's] counsel did not contemporaneously learn that Mr. Tan's visa had been issued, but [CDH's] assertion that this was due to 'conceal[ment]' by Mr. Tan is unfounded. There was simply a failure of communication between [Ivy's] Alabama-based counsel and their Singapore-based client. That failure is worthy of admonishment, perhaps -- but it certainly is not a fraud on this Court."

On June 23, 2025, the trial court held a hearing on CDH's renewed motion for a default judgment.[5] On September 4, 2025, the trial court granted the motion and entered a default judgment in favor of CDH. The judgment stated:

> "This matter came before the Court for a hearing on June 23, 2025, on the most recent renewal of [CDH's] motion for default judgment. This was only the most recent in a series of default judgment hearings. On each previous occasion, counsel for all parties made clear that they were at all times making their best efforts to move the case along and guide the parties.
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> "At the hearing, [CDH's] counsel submitted the attached timeline. While [Ivy] may or may not disagree with some or all of it and the Court does not take it as 'gospel,' it does illustrate the long and convoluted nature of the way in which the parties (not their attorneys) have interacted with each other.
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> "At the June 23, 2025, hearing, counsel expressed how, prior to returning to court, the case had been on the brin[k] of resolution, but that it faltered. [Ivy's] counsel expressed optimism that, given 30 days, that resolution could be achieved. During a subsequent conference call, the Court was informed that it could not be achieved.
>
> "Based on all the information presented to the Court, encompassing the several pleadings filed and hearings held on the topic, the Court hereby GRANTS default judgment in

[5]The Court notes that, in the June 23, 2025, hearing, counsel for Ivy stated: "I'm embarrassed that our firm did not raise the arbitration issue as early as we should have."

> favor of [CDH] and against [Ivy]. Counsel shall inform the Court how long they anticipate a hearing on the damage[s] to be awarded will likely take, at which time said hearing will be set.
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> "Default judgment having been entered, the Court considers the pending motion to compel arbitration to be moot. If counsel thinks this should be handled in a different procedural manner they may inform the Court."

(Capitalization in original; emphasis added.)

On October 16, 2025, Ivy appealed the trial court's judgment.

II. Analysis

Before we may address the parties' substantive arguments in this appeal, we note that CDH has filed a motion to dismiss Ivy's appeal on the ground that the appeal stems from a nonfinal judgment. As CDH observes, the trial court's September 4, 2025, default judgment in favor of CDH reserved the determination of damages for a subsequent hearing.

> "Rule 55(b)(2)[, Ala. R. Civ. P.,] provides that where a default has been entered, but 'in order to enable the court to enter judgment ..., it is necessary to ... determine the amount of damages ... the court may conduct such hearings ... as it deems necessary and proper....' This Court has referred to the interim 'judgment' entered in such a situation as 'an interlocutory default judgment.' Ex parte Keith, 771 So. 2d 1018, 1019 (Ala. 1998). 'A judgment by default with leave to prove damages is interlocutory and can be set aside at any time until entry of judgment on assessment of damages. It then becomes a final judgment.' Maddox v. Hunt, 281 Ala. 335, 339, 202 So. 2d 543, 545 (1967). 'A default judgment that

> reserves the assessment of damages is interlocutory and may be set aside at any time; once the trial court assesses damages on the default judgment, the judgment becomes final. Rule 55(c), Ala. R. Civ. P.; Maddox v. Hunt, 281 Ala. 335, 202 So. 2d 543 (1967).' Keith v. Moone, 771 So. 2d 1014, 1017 (Ala. Civ. App. 1997), rev'd on other grounds, Ex parte Keith, supra."

Ex parte Family Dollar Stores of Alabama, Inc., 906 So. 2d 892, 896 (Ala. 2005) (emphasis added). Because the trial court has not assessed damages for Ivy's default, CDH argues that the September 4, 2025, default judgment was a nonfinal judgment that cannot support an appeal.

Ivy rejoins that, in that same September 4, 2025, judgment, the trial court ruled that Ivy's pending motion to compel arbitration was "moot." Ivy argues that the mootness ruling was the equivalent of denying Ivy's motion to compel arbitration because, it says, "'[t]his Court looks to the substance of a motion or order, rather than its form.' Southland Quality Homes, Inc. v. Williams, 781 So. 2d 949, 952 (Ala. 2000)." Ivy's Memorandum in Opposition to CDH's Motion to Dismiss Appeal, p. 6. Ivy notes that, under Rule 4(d), Ala. R. App. P., an order granting or denying a motion to compel arbitration is immediately appealable.

> "(d) Appeals From Orders Granting or Denying Motions to Compel Arbitration. An order granting or denying a motion to compel arbitration is appealable as a matter of right, and any appeal from such an order must be taken within 42 days (6 weeks) of the date of the entry of the order, or within the time allowed by an extension pursuant to Rule 77(d), Alabama Rules of Civil Procedure."

Rule 4(d). Ivy further asserts that, under Rule 4(d), if it had declined to appeal the September 4, 2025, judgment, it would have lost the chance to appeal the trial court's ruling on its motion to compel arbitration. See Ivy's memorandum, p. 5 (stating that "this appeal represents Ivy's only opportunity to challenge that ruling").

CDH counters by admitting that this Court has not encountered "this exact procedural issue: whether an interlocutory order entering default and mooting a motion to compel arbitration is appealable." CDH's Motion to Dismiss, p. 8. Despite the dearth of binding authority, CDH urges the Court to follow the reasoning of the South Carolina Supreme Court in Palmetto Construction Group, LLC v. Restoration Specialists, LLC, 432 S.C. 633, 856 S.E.2d 150 (2021). The facts in Palmetto presented a similar procedural posture. A subcontractor, Palmetto Construction Group, LLC, brought an action against a general contractor, Restoration Specialists, LLC, and its managing members (collectively referred to as "Restoration Specialists"), for allegedly failing to pay an amount owed under a construction contract that contained an arbitration provision. See 432 S.C. at 635, 856 So. 2d at 151.

> "The circuit court found [Restoration Specialists] in default under Rule 55(a), [S. C. R. Civ. P.], and referred the case to the master in equity pursuant to Rule 53(b), [S.C. R. Civ. P.]. [Restoration Specialists] filed a motion to set aside the entry of default. The master denied the motion, and [Restoration Specialists] appealed. The court of appeals held the master's order was not immediately appealable and dismissed the appeal. Palmetto Constr. Grp.[, LLC v. Restoration Specialists, LLC], 428 S.C. [261,] 266, 834 S.E. 2d [204,] 206 [(Ct. App. 2019)]. The court of appeals found the fact the order refusing to set aside the entry of default effectively precluded [Restoration Specialists'] effort to compel arbitration did not affect the immediate appealability of the order. 428 S.C. at 266-67, 834 S.E.2d at 207."

Id. (emphasis added). That rendition leaves out that Palmetto filed its complaint on February 12, 2016. The circuit court entered a default on April 20, 2016, and referred the case to "the master-in-equity" for a determination of damages. See Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC, 428 S.C. 261, 264, 834 S.E.2d 204, 206 (Ct. App. 2019). On June 5, 2016, Restoration Specialists filed a motion for a continuance and a motion to be relieved from default. On July 11, 2016, Restoration Specialists filed a motion to compel arbitration. "The master issued an order on [July 14, 2016,] denying [Restoration Specialists'] request for relief from default, ordering a damages hearing on October 4, 2016, and denying [Restoration Specialists'] motion to stay and compel arbitration 'as [Restoration Specialists is] in [d]efault.'" 428 S.C. at 265, 834 S.E.2d at 206. Thus, no determination of damages was provided by the "master-in-equity." The South Carolina Supreme Court granted certiorari review to consider the issue of whether "the order [was] immediately appealable because it had the effect of precluding [Restoration Specialists'] motion to compel arbitration." 432 S.C. at 635, 856 So. 2d at 151. The South Carolina Supreme Court affirmed the judgment of the South Carolina Court of Appeals concerning whether the circuit court's ruling was immediately appealable.

The South Carolina Supreme Court began by explaining:

> "A party in default has three primary options: (1) do nothing pending the entry of judgment by default under Rule 55(b), [S.C. R. Civ. P.]; (2) file an appearance under Rule 55(b)(2), [S.C. R. Civ. P.], in an attempt to protect its interests before the entry of judgment by default; or (3) request the entry of default be set aside pursuant to Rule 55(c), [S.C. R. Civ. P.]. Under either option, the party has no right of appeal until after final judgment."

432 S.C. at 635-36, 856 So. 2d at 151. In other words, under South Carolina law, the circuit court's ruling denying Restoration Specialists'

motion to set aside the default judgment was not immediately appealable because it was not a final judgment.

> "[Restoration Specialists] contend[s] the law of arbitration changes the immediate appealability of the master's order. To support [its] contention, [it] rel[ies] on language from the Supreme Court and this Court stating the law 'favors' arbitration. See, e.g., Moses H. Cone Mem'l Hosp. v. Mercury Constr. Corp., 460 U.S. 1, 24, 103 S. Ct. 927, 941, 74 L. Ed. 2d 765, 785 (1983) ('Section 2 [of the Federal Arbitration Act] is a congressional declaration of a liberal federal policy favoring arbitration agreements ....'); Zabinski v. Bright Acres Assocs., 346 S.C. 580, 596, 553 S.E.2d 110, 118 (2001) ('The policy of the United States and South Carolina is to favor arbitration of disputes.'). However, there is nothing in the law of arbitration that affects the immediate appealability of an order refusing to set aside an entry of default. Specifically, the fact the order effectively precludes the defaulting party's effort to arbitrate the claim does not change whether the order may be immediately appealed.
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> "Our courts' statements that the law 'favors' arbitration were never intended to elevate a contractual right of arbitration above the procedural rules of the court or other contractual provisions. See Richard Frankel, The Arbitration Clause As Super Contract, 91 Wash. U. L. Rev. 531, 533 (2014) ('Much of this arbitration favoritism is attributable to lower-court misinterpretation of thirty-year-old dicta ....'). ...
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> "....
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> "Neither the Supreme Court nor this Court, however, meant to give the law of arbitration such a special status that it would supplant state procedural law. Rather, these statements must be read in the context in which the Courts

made them: overruling a longstanding, policy-based rule that arbitration agreements are unenforceable. In Volt Information Sciences, Inc. v. Board of Trustees of Leland Stanford Junior University, 489 U.S. 468, 109 S. Ct. 1248, 103 L. Ed. 2d 488 (1989), the Supreme Court explained, 'There is no federal policy favoring arbitration under a certain set of procedural rules; the federal policy is simply to ensure the enforceability, according to their terms, of private agreements to arbitrate.' 489 U.S. at 476, 109 S. Ct. at 1254, 103 L. Ed. 2d at 498; see also Dean Witter Reynolds[, Inc. v. Byrd], 470 U.S. [213,] 219-20, 105 S. Ct. [1238,] 1242, 84 L. Ed. 2d [158,] 164 [(1985)] ('The [Federal Arbitration] Act, after all, does not mandate the arbitration of all claims, but merely the enforcement ... of privately negotiated arbitration agreements.'). Therefore, when considered in the proper context, our statements that the law 'favors' arbitration mean simply that courts must respect and enforce a contractual provision to arbitrate as it respects and enforces all contractual provisions. There is, however, no public policy -- federal or state -- 'favoring' arbitration. See Toler's Cove Homeowners Ass'n, Inc. v. Trident Const. Co., 355 S.C. 605, 611, 586 S.E.2d 581, 584 (2003) ('There is no federal policy favoring arbitration under a certain set of procedural rules and the federal policy is simply to ensure the enforceability of private agreements to arbitrate.' (citing Volt Info. Scis., 489 U.S. at 476, 109 S. Ct. at 1254, 103 L. Ed. 2d. at 498)).

"In this case, the simple fact the master refused to set aside the entry of default, thereby preventing [Restoration Specialists] from requesting the court to compel arbitration, does not mean the order was immediately appealable. In a case like this, the circuit court should proceed to a determination of damages and the entry of judgment under Rule 55(b). From the final order of judgment, the aggrieved party may file an appeal challenging the circuit court's finding

> there was not good cause to set aside the entry of default, and may address any Rule 60, [S.C. R. Civ. P.], issue such as whether the aggrieved party demonstrated excusable neglect."

Palmetto Constr. Grp., 432 S.C. at 636-39, 856 S.E.2d at 151-53 (emphasis added). Thus, the South Carolina Supreme Court affirmed the South Carolina Court of Appeals' conclusion that a default judgment that did not determine damages was not appealable even though it had prevented Restoration Specialists from immediately appealing the denial of its motion to compel arbitration. However, the South Carolina Supreme Court concluded that the South Carolina Court of Appeals had erred

> "in addressing [Restoration Specialists'] argument [it] did not waive [its] right to arbitration. See Palmetto Constr. Grp., 428 S.C. at 267-70, 834 S.E.2d at 207-08. In the context of default, the concept of waiver is bound up in the Rule 55(c) determination of good cause and Rule 60(b) determinations such as excusable neglect. On appeal from a final judgment, [Restoration Specialists] may challenge any such determinations, and if that challenge is successful, may claim [it] did not in fact waive [its] contractual right to arbitration."

432 S.C. at 640, 856 S.E.2d at 153.

Ivy contends that Palmetto is not procedurally similar to this case because, Ivy says, in South Carolina an order denying a motion compel arbitration is interlocutory but immediately appealable by statute. See

S.C. Codified Laws § 15-48-200(a)(1).[6] In contrast, in Alabama, Ivy argues, a ruling on a motion to compel arbitration is immediately appealable because it is considered a final judgment. Ivy cites Bowater Inc. v. Zager, 901 So. 2d 658, 666 (Ala. 2004), for that proposition; in Bowater, this Court stated:

> "[A]n order granting or denying arbitration is no longer interlocutory in the sense that it remains 'within the breast of the court' subject to revision at any time before final judgment, because it is now established that unless an appeal is timely taken from the order, the order is final."

Ivy contends that this difference matters because, "unlike in Palmetto, to challenge the denial of its motion to compel arbitration, Ivy's only option is to appeal now." Ivy's memorandum, p. 8. Ivy also emphasizes the fact that, in Palmetto, Restoration Specialists did not file its motion to compel arbitration until after a default had been entered against it. In contrast,

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[6]Section 15-48-200(a)(1), S.C. Codified Laws, provides, in pertinent part:

> "(a) An appeal may be taken from:
>
> "(1) An order denying an application to compel arbitration made under [S.C. Codified Laws] § 15-48-20 ...."

Ivy filed its motion to compel arbitration before the trial court ruled on CDH's motion for a default judgment.

In reply, CDH questions whether Ivy is correct in stating that an order denying a motion to compel arbitration in South Carolina is interlocutory but appealable. See CDH's Response in Favor of Motion to Dismiss, p. 5. Regardless, CDH insists, the fact remains that in Palmetto the South Carolina Supreme Court held that a ruling on a motion to compel arbitration did not change the appealability of an interlocutory order granting a motion for a default judgment, which is the same issue presented here. See, e.g., Tri-State Delta Chems., Inc. v. Crow, 347 Ark. 255, 61 S.W.3d 172 (2001) (reaching essentially the same conclusion). CDH admits that, unlike Restoration Specialists in Palmetto, Ivy moved to compel arbitration before a default judgment had been entered. However, CDH notes that, similar to the situation in Palmetto, Ivy did not pursue arbitration until well after CDH had moved for a default judgment and, "crucially, after the conduct warranting default had occurred." CDH's response, p. 6.

Ivy's arguments tellingly do not attack the central reasoning of the South Carolina Supreme Court in Palmetto, which was that "[n]either the [United States] Supreme Court nor this Court ... meant to give the law of arbitration such a special status that it would supplant state procedural law." Palmetto Constr. Grp., 432 S.C. at 639, 856 S.E.2d at 153. Indeed, if anything, that observation was reinforced by the United States Supreme Court in Morgan v. Sundance, Inc., 596 U.S. 411 (2022), in which that Court declared:

> "[T]he [Federal Arbitration Act's] 'policy favoring arbitration' does not authorize federal courts to invent special, arbitration-preferring procedural rules. Moses H. Cone[Mem'l Hosp. v. Mercury Constr. Corp.], 460 U.S. [1,] 24, [(1983)]. ... The policy is to make 'arbitration agreements as enforceable as other contracts, but not more so.' Prima Paint Corp. v. Flood & Conklin Mfg. Co., 388 U.S. 395, 404, n. 12 (1967). ... The federal policy is about treating arbitration contracts like all others, not about fostering arbitration."

Id. at 418.

In this case, the trial court's September 4, 2025, default judgment is clearly interlocutory because the trial court reserved the issue of the amount of damages for a later determination. See, e.g., Ex parte Eustace, 291 So. 3d 33, 36 (Ala. 2019) ("'That a judgment is not final when the amount of damages has not been fixed by it is unquestionable.'" (quoting "Automatic" Sprinkler Corp. of Am. v. B.F. Goodrich Co., 351 So. 2d 555, 557 (Ala. 1977))). Ivy essentially asks us to ignore that fact because, it says, the trial court's ruling on its motion to compel arbitration takes priority under Rule 4(d), Ala. R. App. P.[7] But Rule 4(d) says no such thing. In fact, Rule 4(d) addresses "order[s] granting or denying a motion to compel arbitration," not a judgment such as the one in this case, in which the trial court primarily entered a default judgment based on Ivy's conduct in litigation and secondarily declared that its ruling rendered the motion to compel arbitration "moot." It is true that in certain cases we have construed a trial court's ruling that a motion to compel arbitration was moot to be tantamount to a denial of such a motion. See American Bankers Ins. Co. of Florida v. Pickett, 424 So. 3d 920, 928 (Ala. 2025). But, in this case, the trial court's conclusion that Ivy's motion to compel arbitration was rendered moot by the default judgment carries distinctive meaning. To see why, we must recall the procedural history behind the trial court's September 4, 2025, judgment -- which is the reason Part I of this opinion so carefully describes that history.

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[7]"To allow a party to 'cr[y] arbitration' in order to undo the consequences of its own errors would turn the rationale of arbitration on its head. Menorah Ins. Co. v. INX Reins. Corp., 72 F.3d 218, 223 (1st Cir. 1995)." LaFrance Architect v. Point Five Dev. S. Burlington, LLC, 195 Vt. 543, 554, 91 A.3d 364, 372 (2013).

Ivy did not answer CDH's complaint until June 19, 2024, one day before the scheduled hearing on CDH's first motion for a default judgment and seven months after CDH had filed its complaint. After the trial court had denied that first motion for a default judgment -- ostensibly because Ivy had been attempting to settle the parties' dispute -- the trial court adopted a scheduling order based on a joint motion of the parties on November 26, 2024. Discovery continued on the basis of that scheduling order, but a dispute arose concerning whether Tan should be deposed in person or via videoconferencing technology. Tan repeatedly refused to sit for an in-person deposition, contending that it was not feasible because he lived in Singapore. In the wake of CDH's second motion for a default judgment, on February 19, 2025, the trial court expressly ordered Tan to sit for an in-person deposition in the United States. Tan failed to obey that order. Attempting to excuse that noncompliance, on April 9, 2025, Ivy's counsel expressly represented to the trial court that Tan's visa application had been denied, which was why he could not travel to the United States for the deposition. However, on June 18, 2025, Ivy admitted that Tan's visa application had, in fact, been approved on March 26, 2025, and Ivy tried to explain away the discrepancy in the information it had provided to the trial court as "a failure of communication between [Ivy's] Alabama-based counsel and their Singapore-based client." In a subsequent hearing on CDH's third motion for a default judgment held on June 23, 2025, Ivy again attempted to stave off a default judgment by claiming that a settlement was in the offing, but the trial court later was informed that no settlement could be achieved.

The procedural history makes it clear that the trial court entered a default judgment in favor of CDH and against Ivy based on its belief that Ivy, and particularly Tan, had displayed willfully noncompliant behavior in this litigation. The trial court granted Ivy generous and repeated reprieves for delays in the litigation and for noncompliance in discovery. However, Tan then appeared to directly disobey a trial-court order and seemingly attempted to excuse it by allowing Ivy's counsel to present false information about the status of his visa. The trial court still tried to give Ivy one more chance to resolve the litigation, but, after that failed, the trial court entered the default judgment. In short, the trial court's September 4, 2025, default judgment was based on a perception of flagrant litigation misconduct, not on any issues related to arbitration.

The trial court clearly had the power to enter a default judgment on that basis.

> "Rule 37(b)(2)(C), Ala. R. Civ. P., provides that, under the appropriate circumstances, a trial court may enter '[a]n order ... rendering a judgment by default against the disobedient party.' ... <u>Our Court has specifically held that entry of a default judgment against a party who fails to comply with a discovery order is an appropriate sanction under that rule</u>. <u>See</u> <u>Ex parte Blake</u>, 624 So. 2d 528, 532 (Ala. 1993) (recognizing that 'Rule 37(b)(2)(C), Ala. R. Civ. P., authorizes the trial court to enter a default judgment against a party who fails to comply with a discovery order').
>
> "....
>
> "In addressing what level of conduct rises to the level of 'willfulness' in the context of discovery abuse, our Court has explained that 'willfulness' might be found when '"a party intentionally or willfully fail[s] to attend a deposition"' or does '"not offer[] an explanation for his failure to comply [with discovery requests]."' <u>Ex parte Seaman Timber Co.</u>, 850 So. 2d [246,]256 [(Ala. 2002)] (citations omitted)."

<u>Mobile Invs., LLC v. Corporate Pharm. Servs., Inc.</u>, 415 So. 3d 1018, 1023 (Ala. 2024) (emphasis added). Cf. <u>United States v. Shipp</u>, 203 U.S. 563, 573 (1906) ("Until its judgment declining jurisdiction should be announced, [the court] had authority, from the necessity of the case, to make orders to preserve the existing conditions and the subject of the petition ....).

As CDH has noted, the litigation behavior upon which the default judgment was granted occurred before Ivy filed its motion to compel arbitration. Moreover, Ivy's alleged right to arbitration arises from the joint-venture agreements, while the default judgment is based on party conduct that is separate from the contractual dispute between the parties. Thus, the trial court's decision with respect to the motion for a default judgment was genuinely independent of its ruling on the motion to compel arbitration. That is why a ruling of mootness, rather than a denial, of the motion to compel arbitration was the legally correct disposition of the motion. Accordingly, Rule 4(d), Ala. R. App. P., is not implicated because Ivy's motion to compel arbitration was not denied. In fact, because the default judgment rendered the motion to compel arbitration moot, Ivy potentially could file a new motion to compel arbitration should the default judgment be set aside by the trial court or on appeal. See, e.g., Running Cars, LLC v. Miller, 333 So. 3d 1177, 1179 (Fla. Dist. Ct. App. 2022) ("Moving to set aside the default judgment was necessary to pursue the right to arbitrate. The default judgment impeded the arbitration right, and when that impediment was removed, the first action taken was to compel arbitration."). But that eventuality could become possible only once the default judgment is a final judgment. As we already have made clear, the trial court must assess damages before there is a final, appealable judgment.

III. Conclusion

In sum, the fact that the trial court's September 4, 2025, default judgment in favor of CDH included a ruling that Ivy's motion to compel arbitration was moot does not alter the fact that the judgment was interlocutory and not appealable. Ivy's decision to raise arbitration as an issue in the midst of the ongoing litigation concerning a default judgment did not change the procedural requirement that there must be a final judgment before an appeal is viable given that the basis of the default judgment was separate from the basis for the motion to compel arbitration. The default judgment rendered Ivy's motion to compel arbitration moot rather than being denied. That disposition means that Rule 4(d), Ala. R. App. P., is not implicated in this case. Because Ivy has appealed from an interlocutory judgment, CDH's motion to dismiss the appeal is due to be, and hereby is, granted.

APPEAL DISMISSED.

Stewart, C.J., and Shaw, Bryan, and McCool, JJ., concur.