

State of South Carolina
County of Beaufort
Stevens Builders, LLC,

Plaintiff,

vs.

Michael C. Garraway, Alicia M. Garraway,
and TD Bank, N.A.,

Defendants.

IN THE COURT OF COMMON PLEAS
Civil Case No.: 2019-CP-07-1666

ORDER GRANTING TD BANK'S MOTION TO
BE RELIEVED FROM ENTRY OF DEFAULT

RECEIVED
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SC Court of Appeals

THIS MATTER is before the Court for hearing on Defendant, TD Bank, N.A.'s Motion to be Relieved from Entry of Default ("**Motion**"). A hearing on the Motion was held on February 26, 2020. Present at the hearing were Benjamin Coppage counsel for the Plaintiff, James Wegman, counsel for Michael C. Garraway and Alicia M. Garraway, and J. Martin Page, counsel for TD Bank, N.A. ("**TD Bank**"). For the reasons set forth below, the Court grants TD Bank's Motion.

FINDINGS OF FACT

1. On or around, July 18, 2019, Plaintiff, Stevens Builders, LLC, ("**Plaintiff**") filed a *Lis Pendens*, Summons and Complaint seeking, among other things, the foreclosure of a Mechanics' Lien on real property known as Lot 40 as shown on that certain plat entitled "Bermuda Bluff" St. Helena Township, Beaufort County South Carolina recorded in Plat Book 35 at Pages 164 in the Records of Charleston County (Complaint ¶ 6).
2. Thereafter, TD Bank, was served with the Complaint on or around, September 30, 2019.
3. Thereafter, Plaintiff filed a Motion for Default Judgment ("**Motion for Default Judgment**") on December 2, 2019.

4. A damages hearing on the Motion for Default Judgment was held on January 31, 2020.
5. TD Bank filed the present Motion on February 7, 2020.

DISCUSSION AND CONCLUSIONS OF LAW

TD Bank is entitled to be relieved from default. Entry of default is a ministerial act, which a clerk must perform once default is made to appear by the affidavit of the moving party. Start Truss Co., Inc. v. Superior Const. Corp., 360 S.C. 503, 602 S.E.2d 99 (S.C. App. 2004). Once an entry of default has been made, the standard for granting relief from such entry of default is mere “good cause.” Regions Bank v. Owens, 402 S.C. 642, 648 741 S.E.2d 51, 54 (S.C. App. 2013). The “good cause” standard for a party seeking relief must provide an explanation for the default and reasons why vacation of the default entry serves the interests of justice. Id. If there is a satisfactory explanation for the default, the court must also consider: (1) the timing of the motion for relief; (2) the existence of a meritorious defense; and (3) the degree of prejudice to the nonmoving party if relief is granted. Id. A motion under Rule 55(c) is addressed to the sound discretion of the court. Id., (quoting Wham v. Shearson Lehman Bros., Inc. 298 2.C. 462, 465, 381 S.E.2d 499, 501-02 (S.C. App. 1989)).

TD Bank has shown that “good cause” exists here as to why an answer to the Complaint was not filed.

TD Bank further meets the requirements of the remaining factors: (1) even though no default has been entered, upon being referred the action, TD Bank’s counsel immediately filed this Motion, (2) a meritorious defense exists and (3) there would be no prejudice to the Plaintiff in allowing TD Bank to answer or otherwise response to the Complaint.

IT IS, THEREFORE, ORDERED THAT:

1. TD Bank's Motion to be Relieved from Default is **granted**; and
2. TD Bank shall file an answer or other pleading to the Complaint within **fifteen (15) days** from entry of this Order.

AND IT IS SO ORDERED.

[ELECTRONIC SIGNATURE TO FOLLOW]



Beaufort Common Pleas

Case Caption: Stevens Builders Llc VS Michael C Garraway , defendant, et al

Case Number: 2019CP0701666

Type: Order/Other

So Ordered

s/Carmen T Mullen 2142