ELECTRONICALLY FILED - 2022 Aug 16 9:59 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701995

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	)))	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2019-CP-07-01995
Ronnie L. Douglas, Eric J. Douglas, Jacqueline Walker, Donna Harding, and Diane Brenda Spears, Plaintiffs, v. Kevin Holmes, Defendant.	)))))))))))	**ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

RECEIVED

NOV 14 2022

SC Court of Appeals

Plaintiffs filed this action on August 29, 2019, pursuant to Rule 60(b) of the South Carolina Rules of Procedure, asking this Court to set aside a default judgment entered by the Beaufort County Court of Common Pleas on November 23, 2015. This matter is before the Court upon Defendant's Motion for Summary Judgment.

The Court heard oral argument regarding Defendant's motion on July 22, 2022. Present at the summary judgment hearing were James H. Moss, Esquire, counsel for Plaintiffs, and Jacob M. Hughes, Esquire, defense counsel. Defendant submitted a memorandum of law in support of his motion, with accompanying exhibits, court records, deposition testimony, and transcript of hearing. At the conclusion of the summary judgment hearing, the Court allowed Plaintiffs ten (10) days to supplement any information relevant to the issues raised at the hearing. For the reasons set forth below, Defendant's Motion for Summary Judgment is GRANTED.

FACTS/PROCEDURAL BACKGROUND IN THE 2011 LAWSUIT AND FORECLOSURE ACTION

Plaintiffs are heirs of Clinton Douglas and Susie Douglas. On July 1, 2011, Defendant, represented by Svalina Law Firm, filed a premises liability action against Clinton Douglas, Susie

Douglas, Eric Douglas, and Studio Seven Club, Inc., for injuries and damages Defendant sustained during a shooting at Studio Seven Club in Beaufort County (the "2011 Lawsuit"). *See Holmes v. Studio Seven Club, Inc. et al.*, 2011-CP-07-02743.

After Studio Seven Club was served with the summons and complaint, Colony National Insurance Company sent a letter to Svalina Law Firm on August 9, 2011, requesting an extension of time for Studio Seven Club to answer the complaint. Svalina Law Firm granted the extension. Following the extension of time, no answer was filed on behalf of Studio Seven Club.

On November 16, 2012, the Beaufort County Clerk of Court recorded entries of default as to all defendants in the 2011 Lawsuit. On November 23, 2015, the Court of Common Pleas entered its final order of judgment by default in the amount of $483,000.00. The Court found that Clinton Douglas, Susie Douglas, Eric Douglas, and Studio Seven Club were properly served with the summons and complaint, the motion for default judgment, and the notice of damages hearing.

Clinton and Susie Douglas owned three adjoining parcels of real estate in Beaufort County (the "Subject Properties") as tenants in common. While in operation, Studio Seven Club was located on one of the Subject Properties. Upon Susie Douglas' death, title to the Subject Properties passed by operation of law to her husband, Clinton Douglas, and to her heirs, including Eric Douglas. *See* S.C. Code Ann. §§ 62-2-102 through -103 (1976). Thus, the judgment lien created by the default judgment in the 2011 Lawsuit attached to the property interests of Clinton Douglas and Eric Douglas. Clinton Douglas passed away in Georgia on August 29, 2016.

On April 20, 2018, Defendant filed an action to foreclose the judgment lien, naming as defendants the Estates of Clinton Douglas and Susie Douglas and their heirs: Eric Douglas, Ronnie Douglas, Jacqueline Walker, Donna Harding, and Brenda Spears (collectively, "foreclosure defendants"). *See Holmes v. Estates of Clinton R. Douglas and Susie M. Douglas et al.*, 2018-CP-

ELECTRONICALLY FILED - 2022 Aug 16 9:59 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701995

07-00831. On September 10, 2018, the foreclosure action was referred to the Honorable Marvin H. Dukes, III, Master-in-Equity. None of the foreclosure defendants filed an answer, and an entry of default was entered.

A default final hearing to foreclose the judgment lien attached to the Subject Properties was scheduled on October 18, 2018. At the hearing, foreclosure defendants requested a continuance to investigate the judgment subject to foreclosure, which the Master granted.

On April 4, 2019, a second default final hearing was held. Prior to the hearing, foreclosure defendants moved to set aside the judgment in the 2011 Lawsuit pursuant to Rule 60(b).

DENIAL OF MOTION TO SET ASIDE DEFAULT JUDGMENT

On May 20, 2019, the Master heard foreclosure defendants' Rule 60(b) motion to set aside the default judgment. The Master took testimony from Ronnie Douglas and Eric Douglas and accepted several exhibits into evidence. As noted by the Master, foreclosure defendants' counsel put on the record at the hearing that he represented not only the Estates of Clinton and Susie Douglas but also the entire "Douglas family." Plaintiffs in the case *sub judice* were named parties in the foreclosure action.

Foreclosure defendants argued the default judgment should be vacated because service was improper on defendants in the 2011 Lawsuit. Specifically, foreclosure defendants maintained that Clinton Douglas was incompetent and suffering from Alzheimer's at the time of service and Susie Douglas was deceased and could not be served. Foreclosure defendants also asserted that Studio Seven Club had been dissolved before it was served on July 18, 2011, which was contradicted by defendants' exhibit showing articles of dissolution were not filed with the South Carolina Secretary of State until August 26, 2011. No argument was made that Eric Douglas was improperly served in the 2011 Lawsuit.

ELECTRONICALLY FILED - 2022 Aug 16 9:59 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701995

On July 2, 2019, the Master denied foreclosure defendants' Rule 60(b) motion, finding the default judgment was valid. (Order Denying Defs.' Mot. to Dismiss Default J.). First, the Master observed that "[foreclosure] Defendants . . . have not filed a separate motion in the Court of Common Pleas to overturn the default judgment in the 2011 case; therefore, that order is still in effect." (*Id.* at 2). As to the merits, the Master found that whether service of Susie Douglas was proper "does not affect the judgment against her husband, Clinton R. Douglas, and issue, Eric J. Douglas, in the same lawsuit." (*Id.*). The Master explained that "[b]ecause property owned by Susie M. Douglas passed by operation of law to Clinton R. Douglas and Eric J. Douglas, the judgment lien still attaches to their interest in the real estate subject to foreclosure." (*Id.* at 2–3).

As to Studio Seven Club, the Master found "service was accomplished by serving Eric J. Douglas, who qualifies as a 'managing or general agent' . . . ." (*Id.* at 3). Furthermore, the Master found that because Studio Seven Club "failed to follow South Carolina law requiring [it] to have an accurate registered agent listed with the Secretary of State, service of Clinton R. Douglas, who owned Studio Seven Club . . . and the property on which the club was located, provided additional notice to Studio Seven Club . . . as [Clinton Douglas] would also qualify as a managing or general agent." (*Id.* at 4). Nonetheless, the Master determined "that whether service of Studio Seven Club, Inc. was proper in the 2011 action does not affect the foreclosure action" because "[t]here is no evidence the corporation owned the real estate that is subject to foreclosure." (*Id.*).

Finally, the Master addressed service of Eric Douglas and Clinton Douglas in the 2011 Lawsuit: "As to whether the Court of Commons Pleas had personal jurisdiction of the other defendants—Eric J. Douglas and Clinton R. Douglas—in the 2011 action, I find service of process was proper and the judgment entered by the Court of Common Pleas stands against those defendants." (*Id.*).

ELECTRONICALLY FILED - 2022 Aug 16 9:59 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701995

Foreclosure defendants did not appeal the Master's denial of their Rule 60(b) motion. Instead, Plaintiffs filed this action on August 29, 2019, seeking to set aside the default judgment based on identical arguments rejected and ruled upon by the Master.

STANDARD OF REVIEW

Summary judgment is appropriate when the pleadings, depositions, interrogatory answers, admissions on file, and any affidavits show that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP. "[T]he opposing party may not rest upon mere allegations or denials, but must respond with specific facts showing a genuine issue." *City of Columbia v. Town of Irmo*, 316 S.C. 193, 195, 447 S.E.2d 855, 857 (1994). A court should grant summary judgment "when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." *Hedgepath v. Am. Tel. & Tel. Co.*, 348 S.C. 340, 355, 559 S.E.2d 327, 336 (Ct. App. 2001).

LAW/ANALYSIS

I. Plaintiffs failed to appeal the Master's denial of their Rule 60(b) motion to set aside the default judgment, which was a final judgment on the merits, and accordingly, this unappealed ruling is the law of the case and cannot be contested.

On July 2, 2019, the Master denied foreclosure defendants' motion to set aside the default judgment pursuant to Rule 60(b), SCRCP, finding the judgment was valid. Foreclosure defendants, including Plaintiffs, failed to appeal the denial of their motion to set aside the default judgment, which was a final judgment on the merits. *See Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 428 S.C. 261, 265–66, 834 S.E.2d 204, 206 (Ct. App. 2019), *aff'd as modified on other grounds*, 432 S.C. 633, 856 S.E.2d 150 (2021) ("The denial of a motion to set aside a default judgment is immediately appealable as it is a final judgment on the merits.").

ELECTRONICALLY FILED - 2022 Aug 16 9:59 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701995

ELECTRONICALLY FILED - 2022 Aug 16 9:59 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701995

"An unappealed ruling is the law of the case and requires affirmance." *Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Inj. Fund*, 389 S.C. 422, 431, 699 S.E.2d 687, 691 (2010); *see also Buckner v. Preferred Mut. Ins. Co.*, 255 S.C. 159, 160–61, 177 S.E.2d 544, 544 (1970) (finding an unchallenged ruling, "right or wrong, is the law of th[e] case"); *ML-Lee Acquisition Fund, L.P. v. Deloitte & Touche*, 327 S.C. 238, 241, 489 S.E.2d 470, 472 (1997) ("There was no appeal of the master's ruling . . . . This unappealed ruling is the law of the case . . . and should not have been considered by the Court of Appeals.").

"An appealable order from which no appeal is taken becomes the law of the case in all subsequent proceedings involving the same parties and the same subject matter." *Prof'l Bankers Corp. v. Floyd*, 285 S.C. 607, 613, 331 S.E.2d 362, 365 (Ct. App. 1985).

Plaintiffs did not appeal the Master's ruling denying their motion to set aside the default judgment, which was a final judgment on the merits. Thus, the validity of the judgment became the law of the case. The current action, involving the same parties and seeking to set aside the same judgment, is improper.

II. Plaintiffs have failed to produce any evidence showing entitlement to relief under Rule 60(b), and this action is untimely as a matter of law.

Although the validity of the default judgment is the law of the case and determinative in this action, the Court further finds that Plaintiffs have failed to meet their burden of presenting evidence proving the facts essential to entitle them to relief.

Rule 60(b), SCRCP, provides grounds upon which a court may relieve a party from a final judgment, three of which have been asserted by Plaintiffs:

> (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

(3) fraud, misrepresentation, or other misconduct of an adverse party;

(4) the judgment is void.

To seek relief from a default judgment, a party must provide an explanation for the default and give reasons why vacation of the judgment would serve the interests of justice. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.* at 607–08, 681 S.E.2d at 888.

According to the South Carolina Supreme Court, "[t]he standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the 'good cause' standard established in Rule 55(c)." *Id.* at 608, 681 S.E.2d at 888. Rather, relief from default judgment under Rule 60(b) "requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or 'other misconduct of an adverse party.' " *Id.* (quoting Rule 60(b), SCRCP). "The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief." *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991).

A. Plaintiffs have presented no newly discovered evidence.

Rule 60(b)(2) allows a court to set aside a judgment when there is "newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)." The rule requires, without exception, that relief be sought "within a reasonable time" and "not more than one year after the judgment, order, or proceeding was entered." Rule 60(b), SCRCP. "The one-year limit [of Rule 60(b)] is a non-discretionary mandate." *Coleman v. Dunlap*, 303 S.C. 511, 513, 402 S.E.2d 181, 183 (Ct. App. 1991).

ELECTRONICALLY FILED - 2022 Aug 16 9:59 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701995

On the merits, to be entitled to relief under Rule 60(b)(2), "the moving party must establish that the newly discovered evidence: (1) will probably change the result if a new trial is granted; (2) has been discovered since the trial; (3) could not have been discovered before the trial; (4) is material to the issue; and (5) is not merely cumulative or impeaching." *Se. Hous. Found. v. Smith*, 380 S.C. 621, 638, 670 S.E.2d 680, 689 (Ct. App. 2008) (citation and internal quotation marks omitted).

The Court notes that Plaintiffs did not file a written response to the motion for summary judgment. Having reviewed the Complaint and miscellaneous exhibits submitted by Plaintiffs in this action, it is clear that Plaintiffs fail to establish the existence of any of the five elements required for relief under Rule 60(b)(2). In fact, Plaintiffs do not allege specifics as to what "newly discovered evidence" exists. Furthermore, Rule 60(b)(2) contemplates the occurrence of a trial on the merits from which a judgment is rendered, not a default hearing. *Cf.* Rule 59, SCRCP (setting forth the standards and procedure for motions for a new trial). Regardless, this action is untimely as a matter of law, as relief must be sought "not more than one year after the judgment, order, or proceeding was entered." Rule 60(b), SCRCP.

B. Plaintiffs have presented no evidence of fraud, misrepresentation, or other misconduct.

Rule 60(b)(3) allows a court to set aside a judgment due to "fraud, misrepresentation, or other misconduct of an adverse party." Without exception, relief must be sought "not more than one year after the judgment, order, or proceeding was entered." Rule 60(b), SCRCP.

Consistent with the analysis above, the nearly four-year delay between the time the default judgment was entered on November 23, 2015, and Plaintiffs' filing this action serves as an absolute bar, because "[t]he one-year limit is a non-discretionary mandate." *Coleman*, 303 S.C. at 513, 402 S.E.2d at 183.

ELECTRONICALLY FILED - 2022 Aug 16 9:59 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701995

Even if the Court were to address the merits, summary judgment is still appropriate. Plaintiffs allege in the Complaint that the judgment should be set aside for "fraud, misrepresentation, or other misconduct." (Compl. ¶ 17). While they generally allege service of process issues, Plaintiffs fail to present any facts or provide any evidence that would rise to the level of fraud or misrepresentation. *See Hansen v. DHL Labs., Inc.*, 316 S.C. 505, 511, 450 S.E.2d 624, 628 (Ct. App. 1994), *cert. granted, decision aff'd,* 319 S.C. 79, 459 S.E.2d 850 (1995) (listing the elements necessary to prove fraud); *see also West v. Gladney*, 341 S.C. 127, 133, 533 S.E.2d 334, 337 (Ct. App. 2000) (listing the elements necessary to prove misrepresentation). There is no evidence whatsoever to prove the existence of fraudulent intent, an essential element of fraud. *See Perry v. Heirs at Law of Gadsden,* 357 S.C. 42, 47, 590 S.E.2d 502, 504–05 (Ct. App. 2003).

As the South Carolina Supreme Court has held, Rule 60(b) "requires a more particularized showing of . . . fraud, misrepresentation, or 'other misconduct of an adverse party' " to entitle the movant to relief. *Sundown Operating Co.*, 383 S.C. at 608, 681 S.E.2d at 888. In this case, Plaintiffs have submitted no evidence, much less a particularized showing, of fraud, misrepresentation, or other misconduct of an adverse party that would entitle them to relief.

C. The default judgment is not void.

Rule 60(b)(4) allows a court to set aside a judgment when the judgment is void, but the action must be brought "within a reasonable time." *See also McDaniel v. U.S. Fidelity and Guar. Co.*, 324 S.C. 639, 643–44, 478 S.E.2d 868, 870–71 (Ct. App. 1996) (holding "the reasonable time requirement applies to Rule 60(b)(4)"). "[T]he 'reasonable time' limitation is discretionary and should be determined under the facts and circumstance of each case." *Id.*

Plaintiffs, however, have presented no evidence that the judgment is void. Moreover, the Master explicitly found the default judgment was valid. *See supra* pp. 3–6 and accompanying

ELECTRONICALLY FILED - 2022 Aug 16 9:59 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701995

analysis. Plaintiffs failed to appeal the Master's denial of their motion to set aside the default judgment, which was a final judgment on the merits.

Because the validity of the judgment is the law of the case and because Plaintiffs have failed to meet their burden of presenting evidence proving facts essential to entitle them to relief, as well as the untimeliness of this action under Rule 60(b), summary judgment is proper.

CONCLUSION

For the foregoing reasons, the Court finds that there is no genuine issue of material fact, and Defendant is entitled to judgment as a matter of law. Therefore, the Court GRANTS Defendant's Motion for Summary Judgment.

IT IS SO ORDERED.

The Honorable R. Ferrell Cothran, Jr.

August _____, 2022
Manning, South Carolina

ELECTRONICALLY FILED - 2022 Aug 16 9:59 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701995

ELECTRONICALLY FILED - 2022 Aug 16 9:59 AM - BEAUFORT - COMMON PLEAS - CASE#2019CP0701995

Beaufort Common Pleas

Case Caption: Ronnie L Douglas , plaintiff, et al VS Kevin Holmes

Case Number: 2019CP0701995

Type: Order/Summary Judgment

So Ordered

s/ R. Ferrell Cothran, Jr., 2144