

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2021CP2000264

John Dabeck
PLAINTIFF(S)

Larry Ashford
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

Motion to Reconsider Denied

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 08/17/2023 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

RECEIVED
Sep 14 2023
SC Court of Appeals

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Fairfield Common Pleas

Case Caption: John Dabeck VS Wesco International, Inc. , defendant, et al
Case Number: 2021CP2000264
Type: Order/Electronic Form 4

So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2023-08-17 11:00:59 page 3 of 3

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COUNTY OF Fairfield
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 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

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

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


This matter comes before the court by way of Defendant's motion to set aside default. The case was filed on June 25th of 2021, and Defendant was served on July 6th, 2021. Default was entered against Defendant on October 8th, 2021 and damages were ordered on April 3rd, 2022 by the Court following a hearing where the defendant was present. Following arguments of counsel, the court took this matter under advisement. After careful review and deliberation, the court respectfully denies the Defendant's motion to set aside default.

ORDER INFORMATION


This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 03/27/2023 .



Sep 14 2023



NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

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Fairfield Common Pleas

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So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

Electronically signed on 2023-03-27 11:13:31 page 3 of 3

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)
)
JOHN DABECK,)
)
Plaintiff,)
)
vs.)
)
LARRY DEON ASHFORD AND)
WESCO INTERNATIONAL INC.,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2021-CP-20-00264

RECEIVED
Sep 14 2023
SC Court of Appeals

**ORDER DENYING DEFENDANT
ASHFORD'S MOTION TO SET
ASIDE ENTRY OF DEFAULT**

This matter came before the court on March 23, 2023, on Defendant Ashford's Motion to Set Aside Entry of Default of Defendant Ashford. These matters were submitted for consideration with oral argument and filing of briefs. Upon review, the court HEREBY DENIES Defendant's motion based on the following:

BACKGROUND

Plaintiff filed this lawsuit on or about June 25, 2021, alleging negligence, recklessness, willfulness, wantonness, negligence per se, and gross negligence. Defendant Ashford was served with this lawsuit on July 6, 2021. Plaintiff moved for entry of default which was entered on or about October 8, 2021. The damages hearing was held on March 31, 2022. Defendant Ashford was present. However, Defendant Ashford did not file his motion until September 2, 2022. In his motion and supporting documents, Defendant Ashford admits to being served and having full knowledge of the complaint. Defendant Ashford further asserted he made several efforts to inform his employer of the wreck and the complaint and that he made efforts to hire an attorney – both efforts to no avail.

STANDARD

The standard for setting aside an entry of default is found in Rule 55(c) of the South Carolina Rules of Civil Procedure – there must be “good cause” to set it aside. Rule 55 SCRCP. The rule places the burden of showing good cause squarely on the moving party, or in this case, on Defendant Ashford. If Defendant Ashford fails to show good cause why he was unable to answer the complaint, the court’s refusal to set aside an entry of default will be upheld as supported by the evidence. Williams v. Vanvolkenburg, 312 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989). The trial judge has discretion to make this determination and abuse of that discretion occurs “when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.” Sundown Operating Co. v. Intedge Indus., 383 S.C. 601, 606, 681 S.E. 2d 885, 888 (2009). Further explained, “a party seeking relief from an entry of default [must] provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” Id.

If there is “good cause” or a satisfactory explanation for default, the court then considers “(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. (citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E. 2d 499, 501-02 (Ct. App. 1989)). “The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support for the record for the finding of the lack of good cause.” Id. (citing *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 463 S.E.2d 636, 639 (Ct. App. 1995)).

ANALYSIS

First, there is no dispute that Plaintiff properly served Defendant Ashford pursuant to Rule 4 of the South Carolina Rules of Civil Procedure. See SCRCP Rules 4(d)(1) and 4(d)(3). Thus, the

analysis turns to whether Defendant established good cause or a satisfactory explanation for the default.

As to good cause, Defendant presents his own affidavit along with a phone log to explain why he did not timely answer the complaint. He admits to being served and having knowledge of the complaint. He also admits he was present for the damages hearing. His presumed good cause is not being able to get his employer to step in nor was he able to hire an attorney. This does not suffice as good cause.

Our courts have held that an attorney nor an insurance company's misconduct in timely answering a complaint on behalf of a defendant does not excuse the named defendant from the misconduct. Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 681 S.E.2d 885 (2009). If the courts hold a defendant to his attorney's untimely action, then the defendant himself is certainly not relieved if it is his own fault that he did not timely answer.

Even if Defendant Ashford did establish good cause, he still cannot satisfy the requirements of *Sundown* and *Wham*: (1) his motion for relief was not until approximately 14 months after he was served; (2) his only "meritorious defense" is on the damages issue but he provided no evidence in support of that defense¹; and (3) Plaintiff is prejudiced in an almost two year delayed start to his case.

CONCLUSION

Defendant Ashford has failed to establish good cause to set aside the default.

Furthermore, even if they had, Defendant Ashford has likewise failed to satisfy the *Wham* factors. Thus, Defendant's Motion to Set Aside the Entry of Default is DENIED.

¹ See Thompson v. Hammond, 299 S.C. 116, 120, 382 S.E.2d 900, 903 (1989) (providing a movant must present a defense that raises a question of law worth discussing or that raises a real controversy arising from conflicting or doubtful evidence); see also Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139 (2011) ("granting the trial judge wide latitude in the review of an award of damages").

IT IS SO ORDERED

Dated: _____

Honorable Brian Gibbons
Chief Administrative Judge



Fairfield Common Pleas

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So Ordered

s/Brian M. Gibbons #2168 Circuit Judge

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