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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge

Case No. 2022-CP-26-4440
Appellate Case No. 2023-000567

Redfin Corporation, Christine LeFont, Rodolfo A. Pisigan Jr., Portia O. Pisigan, Jeremy Pisigan, and Cherry C. Pisigan, Defendants. Of Which Redfin Corporation is the Respondent.

Respondent,

v.

Hope Dukes and Nicole Dukes,

Appellants

BRIEF OF APPELLANT

Hope Dukes and Nicole Dukes
11 Crown Street
Bloomfield, NJ 07003-4701
(201) 304 – 1149
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EXHIBIT C: Motion for Entry of Default and a Judgment by Default filed with the Horry County Court of Pleas on August 16, 2022 (without all the attachments)

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I. The court erred by not granting the Motion for Entry of Default and a Judgment by Default in the amount of $22,635.42, according to the law. (R. pp. 3-11)

II. The court clearly stated, on the record, that he did not have his rule book (R. p. 66 lines 21-22). Subsequently, the court solely relied upon the respondent's attorney reading the court the part of the law that benefitted the respondent and the court relied solely on the Respondent's attorney's interpretation of the law (R. p. 66 lines 22-25, R. p. 67 lines 1-10, R. p. 68 lines 11-25, R. p. 69 Lines 1-25, and R. p. 70 lines 1-19). By law, the court was supposed to know the legal interpretation of the Federal and South Carolina Rules of Civil Procedures, because, consequently, the part of the law that the Respondent's attorney said on the record was not applicable in this case. The court severely erred.

III. The respondent's only defense in their answer against the Motion for Entry of Default and a Judgment by Default was that they had 5 additional days to respond to the original complaint (R. pp. 53-55); therefore, at the Motion for Entry of Default and a Judgment by Default hearing, the court was only supposed to rule on the issues raised in the respondent's defense answer. The court erred in allowing the Respondent to raise issues that were not included in the original answer (R. p. 70 lines 20-25 and R. p. 71 lines 1-15).

IV. The court erred by allowing the Respondent's attorney to prepare the final order (R. p. 70 lines 20-25 and R. p. 71 lines 1-15)., which was flawed and based on the Respondent's attorney's interpretation to better her case; what was stated on the record by the court in the hearing was not wholly included in the final order (R. pp. 6-11).

STATEMENT OF THE CASE

Appellants showed interest in buying a condominium located at 6253 Catalina Drive Unit 812, North Myrtle Beach, SC 29582. Originally, the Appellants received the disclosure statement that stated that the HVAC system was only approximately 3 years old, which is fairly new, visually saw that the dish washer was new, and were told that the property was well maintained. An offer was placed and accepted. After the contract was signed, the earnest deposit in the amount of $2,000.00 was paid, and the Appellants paid for the inspection, the inspection report revealed that the HVAC system was near the end of its life expectancy and it was 15 plus years old; therefore, the Appellants were lied to from the beginning when there were multiple properties for sale in the same community, going for around the same asking price that the Appellants could have purchased instead. After the Appellants closed on the property, they then realized that almost the entire disclosure statement was an absolute lie, which is prohibited by the South Carolina Code of Laws (Title 27, Chapter 50, Article 65) to purposely lie on the disclosure statement. Page 2 of the disclosure statement asks if there are any problems, which "problem includes defects, malfunctions, damages, conditions, or characteristics". After the closing, the Appellants found out the following defects, malfunctions, damages, conditions, and/or characteristics and the disclosure statement clearly stated that there were no defects, malfunctions, damages, conditions, or characteristics:

- Plumbing system
- Appliances (washer & dryer)

- HVAC system's old age
- Door
- Drainage problems

The Appellants' real estate agent, Jerome Bannister, told the Appellants that the sellers agreed to do everything on the list except for replacing the HVAC system. Additionally, Jerome Bannister informed the Appellants, by way of a forwarded email from the Respondent's real estate agent, that there was an active extended warranty on the HVAC system that would cover the HVAC system if it failed for any reason and the Appellants would be able to extend the extended warranty to cover the HVAC system even longer.

At the closing, the Appellants were told that the extended warranty was left on the counter inside of the property, which was found to be a lie. Once the Appellants received the keys to the property after the closing, the extended warranty information for the HVAC system was not on the counter as the Respondent's real estate agent told the Appellants' real estate agent. Additionally, the Appellants called Lennox, the manufacturer of the HVAC system, and Lennox informed the Appellants that the HVAC system never had an extended warranty on it and that an extended warranty could not be purchased due to the system's old age. The extended warranty for the HVAC system that was assured and the home warranty that was included in the contract are two different things. The home warranty would not cover the HVAC system nor anything preexisting. Once emails were sent out, it was told that the things were "overlooked", the disclosure form stating the HVAC is 3 years old instead of over 15 years old was a minor error as well as the Respondent's real estate agent, Christine LeFont, also laughing "haha" in the email. The washing machine also did not work. Furthermore, behind the silver metal plate that was on the front door, the front door was broken and had multiple holes, which is something that the Respondent's agent should have legally disclosed to the Appellants. The South Carolina Code of Laws (Title 27, Chapter 50, Article 1) require the sellers of any property and the sellers' agent to provide the buyer with a "disclosure statement." This is a legal document that tells the buyer about any known defects in the home and property.

Once the Appellants moved into the property, multiple things were found wrong with the property and the sellers of the property did not do what was agreed upon. The Appellants closed on the property on May 10, 2022 at 2pm and the first email to the Respondent's agent, Christine LeFont, was sent on May 12, 2022.

After making several attempts to settle this matter out of court with all the respondent and defendants for months and being ignored by both the respondent and defendants, on July 13, 2022, the appellants filed a Civil Action complaint with the Horry County Court of Common Pleas, which included the complaint along with several attachments. (R. pp. 32-42).

On July 14, 2022, the Appellants mailed a copy of the entire complaint to all the defendants, including the Respondent, via USPS Priority Mail, Certified Mail Return Receipt as we were told to do by the Horry County Court of Common Pleas.

On July 16, 2022, the Respondent signed for the package, which included the complaint and all the attachments. (R. p. 46)

On August 15, 2022, the Appellants filed the Affidavit of Mailing, which is mandatory according to the court rules. (R. p. 46) is the "clocked" copy of the green card that was filed with the court, which is needed by law for a default judgment to be entered. The respondent, Redfin Corporation, was required by law to file an answer by August 15, 2022, and they did not.

On August 16, 2022, the appellants filed a Motion for Entry of Default and a Judgment by Default as per South Carolina state and federal law in the amount of $22,635.42. (R. pp. 48-51)

The law states that we must be able to prove the amount that we are asking for in the judgement; therefore, we attached all our receipts, totally over $40,000.00.

Once the respondent received the Motion for Entry of Default and a Judgment by Default, on August 19, 2022, Cheryl D. Shoun (Attorney for Respondent) filed a Return to Plaintiffs' Motion for Entry of Default and a Judgment by Default. In that motion, in the paragraph titled "FACTUAL BACKGROUND", the respondent acknowledged and confirmed that they were served properly and received the complaint certified mail return receipt: “On July 16, 2022, Redfin signed the return receipt after accepting receipt of the mailed complaint,” in their own motion (R. pp. 53-55). The respondents never stated that they were not served properly.

Originally, the Motion for Default hearing was scheduled for January 30, 2023. The Appellants, specifically Hope Dukes, had severe complications from contracting the COVID-19 virus and the hearing had to be adjourned to another date. While waiting for the new court date, the respondent electronically filed a supplemental motion on December 29, 2022 (R. pp. 57-59), almost five months after their original motion. In the supplemental motion, almost five months after they already admitted to being served the original complaint properly, the respondent lied and said that they were never served; this is not a faithful allegiance to the law. This further shows that the respondent continues to act in bad faith and the appellants asked the court to deny the respondents supplemental motion for that reason (R. pp. 61-64) On August 19, 2022, the respondent’s original answer to the Motion for Entry of Default and a Judgment by Default clearly stated that they were served properly and that they signed the certified return receipt when they were served with the original complaint on July 16, 2022 (R. pp. 53-55). The respondent cannot file a motion stating that they were served properly and signed for it then almost five months later change their story, lie, and say that respondent did not sign for it and was never served at all.

On March 7, 2023, during the Motion for Entry of Default and a Judgment by Default hearing, the Court denied the entry of default of judgement based on South Carolina Rule 6(e), according to Redfin's attorney's interpretation of the rule and the Court erred (R. p. 66 lines 22-25, R. p. 67 lines 1-10, R. p. 68 lines 11-25, R. p. 69 Lines 1-25, and R. p. 70 lines 1-19). Subsequently, the court also denied the Appellant’s Motion for Reconsideration (R. pp. 3-5).

ARGUMENT

I. The court erred by not granting the Motion for Entry of Default and a Judgment by Default in the amount of $22,635.42, according to the law.

"Appellant takes exception to the order of Judge Pruitt and assigns his actions in giving an additional ten days to answer as an error and an abuse of discretion; that his action violated due process clause of The Federal Constitution in that he deprived appellant of the equal protection of the law by a Judicial Proceedings in which he went contrary to state law, and settled rules of legal Federal and State Procedures, to deny the relief sought which is guaranteed to all citizens by bothFederal and State Law." See, e.g., Lee v. Peek, 240 S.C. 203, 125 S.E.2d 353, 206 (R. pp. 81-86)

The court failed to do their due diligence in understanding and interpreting the laws which were applicable in this case. Rule 55(a) (r. pp. 77-78) requires that the Court enter all judgments by default and preserves Circuit Rule 15. Federal Rule 55(b) (r. pp. 77-78) permits the Clerk to enter judgments by default for sums certain if the defendant does not answer the complaint within 30 days after the service hereof, exclusive of the day of such service, and if fail to answer, judgement by default will be rendered against the defendant for the relief demanded in the

complaint. The Respondent failed to answer the complaint within 30 days; therefore, a judgement by default should be entered against them. TOTAL JUDGEMENT OF DEFAULT AMOUNT: $22,635.42.

On Page 3 of (R. pg. 34), which is part of the forms that the Appellants received directly from Horry County Court of Common Pleas, it specifically states in writing, "TO THE DEFENDANT ABOVE-NAMED YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint." Therefore, Redfin Corporation, the Respondent, knew that they specifically had 30 days to answer the complaint, after the service hereof, exclusive of the day of such service, and, if they failed to answer, judgement by default will be rendered against them for the relief demanded in the complaint. The other defendants sent their response to the complaint within 30 days; the Respondent did not.

Once the respondent received the Motion for Entry of Default and a Judgment by Default, on August 19, 2022 (R. pp. 48-51), Cheryl D. Shoun (Attorney for Respondent) filed a Return to Plaintiffs' Motion for Entry of Default and a Judgment by Default (R. pp 53-55). In that motion, in the paragraph titled "FACTUAL BACKGROUND", the respondent acknowledged and confirmed that they were served properly and received the complaint certified mail return receipt: "On July 16, 2022, Redfin signed the return receipt after accepting receipt of the mailed complaint," in their own motion. (R. pg. 53) The respondents never stated that they were not served properly; therefore, the respondents had 30 days to respond according to rule 6d (6), which they did not. (R. pg. 73)

The court also quoted inaccurate information and said that the record did not contain a return receipt showing the acceptance by the defendant. (R. pg. 69 Lines 16-25) and (R. pg. 70 Lines 1-5). The record did contain a return receipt showing the acceptance by the defendant. Please refer to R. Pg. 46.

According to the South Carolina Law and Federal Law, a Motion for Default Judgment must be entered when the defendants do not answer a complaint sent to them via certified mail return receipt in 30 days. South Carolina and federal rule 6 d (6) explain the exact same thing: "(6) Service by Certified Mail. Service is effective upon the date of delivery as shown on the return receipt. Service pursuant to this paragraph shall not be the basis for the entry of a default judgment unless the record contains a return receipt showing the acceptance by the defendant."

II. The court clearly stated, on the record, that he did not have his rule book. Subsequently, the court solely relied upon the respondent's attorney reading the court the part of the law that benefitted the respondent and the court relied solely on the Respondent's attorney's interpretation of the law. By law, the court was supposed to know the legal interpretation of the Federal and South Carolina Rules of Civil Procedures, because, consequently, the part of the law that the Respondent's attorney said on the record was not applicable in this case. The court severely erred.

The Court clearly stated that he did not have his rule book. (R. pg. 66, Lines 21-25). Subsequently, the court solely relied upon the respondent's attorney reading him the laws. (R. Pg.

67, Lines 1-10). The respondent's attorney did not read the entire law rule 6 and the appellants told the court this. (R. pg. 68, Lines 11-25 and pg. 69, Lines 1-15). The respondent's attorney was dishonest and only read the part of the line that she thought would benefit her. (R. pg. 67, Lines 1-7), which is not having a faithful allegiance to the law. The court was not supposed to choose sides. By law, the court was supposed to know the real interpretation of the laws and rules, as this part of the law was not applicable in this case, as stated by the respondent's attorney to the court. We clearly didn't have a fair chance from the beginning.

III. The respondent's only defense in their answer against the Motion for Entry of Default and a Judgment by Default was that they had 5 additional days to respond to the original complaint; therefore, at the Motion for Entry of Default and a Judgment by Default hearing, the court was only supposed to rule on the issues raised in the respondent's defense answer. The court erred in allowing the Respondent to raise issues that were not included in the original answer.

The respondent's ONLY defense in their answer to the Motion for Entry of Default and a Judgment by Default (R. pp. 53-55) was:

- **ARGUMENT AND INCORPORATED LEGAL STANDARD**:
  Plaintiffs' Motion must be dismissed, because Redfin is not and has never been in default in this case. Plaintiffs fail to consider all the applicable rules setting forth the deadline by which to file a responsive pleading. While a defendant "shall serve [its] answer within 30 days after the service of the complaint upon [it]." Rule 12(a), SCRCP, Rule 6 of the South Carolina Rules of Civil Procedure, provides (R. pp. 75-76):
  > a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, five days shall be added to the prescribed period.

  Rule 6(e), SCRCP (emphasis added). In this case, Redfin was served via mail. Therefore, the five-day rule applies under Rule 6(e), and Redfin's responsive pleading is due August 22, 2022. Because Redfin filed its Motion to Strike and Motion to Dismiss on August 19, 2022, it complied with all applicable rules and did not default for failing to respond in time. (R. pp 53-55) The respondent's argument has no legal basis. The law only gives 5 additional days, which is called a prescribed period, only when the complaint is sent by regular mail. Furthermore, the respondent also mentioned South Carolina rule 12(a) in their answer, but South Carolina rule 12(a) specifically states (R. pp. 75-76), "A defendant shall serve his answer within 30 days after the service of the complaint upon him." Redfin received a copy of the complaint via certified mail, which they acknowledged and confirmed in their own answer dated August 19, 2022.

The respondent's only defense in their answer against the Motion for Entry of Default and a Judgment by Default (R. pp. 53-55) was that they had 5 additional days to respond to the original complaint; therefore, at the Motion for Entry of Default and a Judgment by Default hearing, the court was supposed to rule according to the law. The only issues that were supposed to be raised was the respondent's defense, which is that they had 5 additional days to respond to the original

complaint, when in fact Rule 6e clearly states “Other Service,” not Certified Mail. Rule 12 and other laws protect the appellants from any other issues being raised and the court did not follow the law. The court was supposed to rule on whether the respondent had 5 additional days by law or not. Being that the law does not state that the respondent had 5 additional days when the original complaint is filed by certified mail return receipt, a judgment by default was supposed to be entered in the amount of $22,635.42. The court erred.

The only defense that the respondent had was that they had 5 additional days. This was the only defense that was supposed to be heard. The respondent had already put in writing that they were served properly and that they had received the original complaint via certified mail on July 16, 2022. At the end of the Motion for Entry of Default and a Judgment by Default hearing, when the respondent felt that they were losing at the hearing, they tried to raise another defense at the end, which should not have been allowed by law. (R. pg. 70 Line 25 and pg. 71 Lines 1-2): “The return receipt reflects that it is not restricted delivery, so default would not be appropriate anyway.” The respondent’s only defense in their answer was that they had 5 additional days. The respondent had already made admissions in writing that they were served properly and that they signed the certified return receipt. Furthermore, the rule says that it “maybe” delivery restricted, which is rule 6, in its entirety is the on the court’s website. Appellants also sent a package with original complaint in it directly to the respondent’s corporate headquarters, where all the certified mail were sent, and the respondent had already made admissions in writing that they were served properly and that they signed the certified return receipt.

IV. The court erred by allowing the Respondent’s attorney to prepare the final order, which was flawed and based on the Respondent’s attorney’s interpretation to better her case; what was stated on the record by the court in the hearing was not wholly included in the final order.

The court allowed the Respondent’s attorney to prepare the final order. This final order was prepared with prejudice after the appellants filed their Motion for Reconsideration. The Respondent’s attorney clearly tailored the final order to favor the Respondent, to defend the Respondent against the Appellant’s Motion for Reconsideration, and the things that the Respondent’s attorney put in the final order are not what the court stated during the Motion for Entry of Default and a Judgment by Default hearing, which is clearly proven by way of the court transcript. The appellants challenged this final order with the Horry County Court of Common Pleas for the reasons set forth and the appellants were ignored. Although the Appellants asked for oral arguments, the court denied the Motion for Reconsideration with prejudice. (R. pg. 23 Lines 9-15). It was clear that the court favored the respondent by allowing them to write their own final court order (R. pp. 6-11) with contradictory information. As Respondents previously stated on August 19, 2022 in their Return to Plaintiffs' Motion for Entry of Default and a Judgment by Default (R. pp 53-55), in the paragraph titled "FACTUAL BACKGROUND," the Respondent stated, “On July 16, 2022, Redfin signed the return receipt after accepting receipt of the mailed complaint”, yet in the order electronically filed on March 22, 2023, it is stated in The Honorable Benjamin H. Culbertson’s Order Denying Plaintiffs’ Motion for Default Judgement (R. pg. 8) that, “Redfin did not become aware of Plaintiffs’ Complaint until after Ms. LeFont was served on August 4, 2022.” This is not a faithful allegiance of the law on the court’s nor the respondent’s behalf.

CONCLUSION

The appellants have proven their case legally on a state and federal level; therefore, the appellants are asking that the appeal be granted and a Default Judgement in the amount of $22,635.42 be entered.

Thank you,

Hope Dukes

Nicole Dukes

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v.

Hope Dukes and Nicole Dukes, Appellant.

CERTIFICATE OF APPELLANT

The undersigned certifies that this final brief complies with Rule 211(b), SCACR.

November 10, 2023

s/ Hope Dukes et al
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PROOF OF SERVICE

We certify that we have served the Final Brief, pursuant to Rule 210(c), SCACR, again on November 10, 2023 to South Carolina Court of Appeals PO Box 11629 Columbia, SC 29211, Redfin Corporation and Christine LeFont by depositing a copy of it in the United States Mail addressed to the attorney of record, Cheryl D. Shoun and Rhett Ricard - Nexsen Pruet, LLC, 205 King Street - Suite 400, Charleston, SC 29401 [by USPS Mail] and served upon State of South Carolina, County of Horry, Court of Common Pleas, P.O. 677, Conway, SC 29528-0677 as well as to Rodolfo A. Pisigan Jr., Portio O. Pisigan, Jeremy Pisigan, and Cherry C. Pisigan, 13957 Winding Ridge Lane, Centreville, VA 20121. All parties listed above was also sent the Appellant's Initial Brief as well as the Designation of Matter via email.

November 10, 2023

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