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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

Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2023-000567

Hope Dukes and Nicole Dukes.....Appellants,

v.

Redfin Corporation, Christine Lefont, Rodolpho A. Pisigan Jr.,
Portia O. Pisigan, Jeremy Pisigan, and Cherry C. Pisigan Defendants,

Of which

Redfin Corporation is the Respondent.

BRIEF OF RESPONDENTS
REDFIN CORPORATION AND CHRISTINE LEFONT

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STATEMENT OF ISSUES ON APPEAL

I. Whether the trial court committed a clear abuse of discretion in denying Appellants' Motion for Entry of Default?

STATEMENT OF THE CASE

I. FACTUAL BACKGROUND

Although not necessary to resolve this appeal, a brief recitation of the facts is herein presented in order to provide the Court with the factual background. Redfin Corporation ("Redfin") is a nationwide residential real estate brokerage, licensed in South Carolina. (R. p. 57). Christine Lefont ("Ms. Lefont") is a licensed real estate agent who works for Redfin. (R. p. 57). Rodolfo A. Pisigan Jr., Portio O. Pisigan, Jeremy Pisigan, and Cherry C. Pisigan were the sellers (collectively, "sellers") of the Property, defined below. (R. p. 57). Ms. Lefont acted as sellers' agent in the transfer of ownership of the property commonly known as 6253 Catalina Drive, Unit 812, North Myrtle Beach, South Carolina (the "Property"). (R. p. 57). Appellants entered into an agreement with the sellers to buy the Property (the "Agreement") on or about March 16, 2022. (R. p. 57).

The Agreement provides, among other things, sellers' agreement to pay the sum of \$480.00 in order to purchase a home warranty. (R. p. 41). Appellants were also provided a State of South Carolina Residential Property Condition Disclosure Statement ("Disclosure Statement"). (R. p. 36). Appellants acknowledged receipt of the Disclosure Statement on March 16, 2022. Appellants also secured an inspection of the Property. (R. p. 36).

The Agreement provides, in pertinent part, that all repair procedure inspections and requests shall be delivered to sellers by 6 p.m. on March 25, 2022. Presumably as a result, in part, of the Inspection Report, Appellants, through their agent, requested the sellers replace the HVAC system. (R. p. 37). Sellers declined to do so, and Appellants subsequently acknowledged that

position. (R. p. 37). As a result of that exchange, and pursuant to the Agreement, Appellants had the choice to (1) accept the Property in its present condition, (2) negotiate a new agreement, or (3) terminate the Agreement. The Appellants chose to accept the Property as-is.

Section 21 of the Agreement, entitled Entire and Binding Agreement (Merger Clause), provides the Appellants' acknowledgment that the Agreement expresses the entire agreement between the parties, without any other agreement, oral or otherwise, modifying the terms thereof. Section 25 of the Agreement acknowledges that Appellants' execution of the Agreement is made freely and voluntarily, without reliance upon any statements, representations, inducements, promises or agreements by sellers, Redfin, or Ms. Lefont, except as specifically set forth in the Agreement. This Section further provides if any statements or representations are not included in the Agreement, they shall be of no force or effect.

The transaction pursuant to which Appellants purchased the Property closed on May 10, 2022. At that time, there was debited from sellers' proceeds the requisite sum for the home warranty, which was paid to America's Preferred Home Warranty, Inc. ("America's Preferred Home Warranty"). The deduction from sellers' proceeds was made pursuant to an invoice issued on behalf of America's Preferred Home Warranty. Proof of payment and proof of the issuance of the home warranty is evidenced by an e-mail from America's Preferred Home Warranty sent to Appellants' own real estate agent on May 18, 2022.

II. PROCEDURAL HISTORY

Appellants filed their Complaint on July 13, 2022, alleging issues related to their purchase of the Property. (R. p. 7). The following day, on July 14, 2022, Appellants allege they sent a copy of the Complaint to Redfin via certified mail. (R. p. 7). Appellants alleged that on July 16, 2022, the return receipt for the certified mail was signed with the initials "MB." (R. p. 7). On August 16,

2022, before an entry of default was ever issued, Appellants filed a Motion for Default Judgment against Redfin and Ms. Lefont. (R. p. 7).

Redfin had no record or knowledge of receipt of the Complaint on July 16, 2022. (R. p. 7). However, through a review of the docket, Redfin learned of the filing of Appellants' Motion for Default Judgment. (R. p. 7). As a result, on August 19, 2022, Redfin filed its Return to Plaintiffs' Motion, along with Motions to Strike and to Dismiss filed on behalf of Redfin and Christine Lefont. Upon further investigation into the purported service of Appellants' Complaint, however, Redfin confirmed July 16, 2022 was a Saturday. (R. p. 7). Redfin's office, located at 1099 Stewart Street, Seattle, Washington ("Redfin Location"), the address to which Appellants' certified mail was directed, is not open for business on Saturdays, in general, and was not open on the specific Saturday of the purported delivery. (R. pp. 7–8). This location is a multi-floor downtown office building with offices for various businesses. (R. p. 8). This is evidenced by the Affidavit of Emily Cisneros relied upon by the trial court. (R. pp. 89–96). Further, despite the return receipt being signed by someone with the initials "MB," Redfin determined there is no employee or authorized agent or representative of Redfin at the Redfin Location with the initials of "MB." (R. p. 8). Inquiry was even made of the employees working at the Redfin Location and no one is aware of the identity of the individual associated with the initials "MB," all as more fully set forth in the Affidavit of Emily Cisneros, referenced above. (R. p. 8). Because Redfin is not the sole occupant of the facility located at the Redfin Location, it is believed Appellants' Complaint was left with an individual not employed by or otherwise affiliated with Redfin, who just happened to be present in the lobby of the building at the Redfin Location. (R. p. 8). Separately, Ms. Lefont was served a copy of the Complaint on August 4, 2022. (R. p. 8). At no time was an entry of default entered against either Redfin or Ms. Lefont.

A hearing on Appellants' Motion was heard on March 7, 2023. The Court entered an Order denying Appellants' Motion on March 22, 2023. (R. pp. 6–11). Appellants' noticed the pending appeal on April 11, 2023.

STANDARD OF REVIEW

In this case, the trial judge denied Appellants' motion for default judgment, which is governed by the same standard as whether to set aside an entry of default. "The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge." *Sundown Operating Co. v. Intedg Indus., Inc.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) (citing *Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.*, 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006)). "The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Id.* at 606–07, 681 S.E.2d at 888 (citing *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 162–63, 375 S.E.2d 321, 322–23 (Ct. App. 1988)). "An abuse of 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." *Id.* at 607, 681 S.E.2d at 888 (citing *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997)).

As mentioned above, the above standard applies on review of a circuit court's order denying a motion for default judgment as well. *See, e.g., Vista Invs., LLC v. Tompkins & McMaster, LLP*, No. 2013-001385, 2015 WL 5248737, at *1 (S.C. Ct. App. Sept. 9, 2015) (upholding a denial of a motion for default judgment on the abuse of discretion standard); *Com. Credit Corp. v. Knight*, 272 S.C. 435, 437, 248 S.E.2d 589, 590 (1978) (finding an abuse of discretion in denying a motion for default judgment).

Rule 55(a) states the clerk shall record an entry of default when a party fails to respond to

a complaint. Rule 55(a), SCRCP. However, Rule 55(c) allows the circuit court, upon a motion, to set aside the entry of default. Rule 55(c), SCRCP. The standard for granting relief from an entry of default under Rule 55(c) is mere “good cause.” *Sundown*, 383 S.C. at 607, 681 S.E.2d at 888.

This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. 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 (citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct. App. 1989)).¹

ARGUMENT

The circuit court did not commit an abuse of discretion in denying Appellants’ Motion for Default Judgment. First, Appellants have not demonstrated that Redfin or Ms. Lefont were ever in default. Entry of default was never entered by the clerk of court. Further, it is undisputed Ms. Lefont was served on August 4, 2022, and timely responded by joining Redfin in its Motion to Dismiss filed on August 19, 2022. Regarding Redfin, Appellants hang their hat on the allegation that Redfin was properly served on July 16, 2022. However, Redfin disputes this allegation, as supported by the unopposed affidavit of Emily Cisneros. (R. pp. 89–96). The Court did not abuse its discretion in relying upon an affidavit submitted in support of Redfin’s position. Indeed, the Court made the requisite specific findings of fact. *See, e.g., Com. Credit Corp.*, 272 S.C. at 436–37, 248 S.E.2d at 590 (finding an abuse of discretion in denying a motion for default judgment

¹ Rule 60(b), which applies a more rigorous standard, is only applicable when default judgment has been entered. It bears repeating, neither a record of entry of default occurred in this case, nor was default judgment ever entered.

when the circuit court did not issue specific findings of fact and when the party opposing default judgment presented no affidavits or supporting documentation).

Second, and in order to sidestep the issue of whether Redfin had ever been properly served, Appellants claim Redfin is bound exclusively to its initial argument presented in its Return to Plaintiffs' Motion for Entry of Default and a Judgment by Default, filed on August 19, 2022. This argument was premised on five additional days being allowed for filing a response to an Answer, based on Redfin only being served via mail. *See* Rule 6(e), SCRCPP (“[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.”). However, Appellants fail to demonstrate any authority, both to the circuit court and to this Court, supporting their positions that (1) the circuit court was prevented from considering the additional argument and affidavit presented by Redfin prior to and during the hearing, and (2) the five-day extension provided by Rule 6(e) does not apply. Because Appellants cannot show any authority suggesting the circuit court erred, it cannot be said the circuit court committed an error of law.

Third, even assuming *arguendo* Redfin were in default, Redfin has demonstrated good cause due to (1) never being properly served and (2) responding to Appellants' Complaint within three days following Appellants' Motion for Default Judgment. Further, Redfin has a meritorious defense based on the Agreement that will undermine any and all causes of action alleged by Appellants due to the Merger Clause and Appellants' acceptance of the Property as-is; and Redfin was not even a party to the Agreement. Additionally, Appellants fail to demonstrate any prejudice due to any alleged untimeliness. The Court did not commit an abuse of discretion given these factors either.

Lastly, Appellants aver the circuit court erred in instructing Redfin's counsel to prepare the final order on Appellants' Motion for Default Judgment. Relying on one of the parties to prepare an order is common practice and simply does not constitute an error of law, whether generally or specifically in this case.

CONCLUSION

Based on the foregoing, there has been no clear showing of an abuse of discretion in the circuit court's denial of Appellants' Motion for Default Judgment. The circuit court made specific findings of fact, which were supported by legal authority as well as an affidavit presented by Redfin. In contrast, Appellants' arguments are unsupported by any legal authority and are without merit. Appellants' displeasure with the outcome of the circuit court's reasoned order is not sufficient to overturn it. Without more, Appellants' appeal must be dismissed.

Respectfully submitted,

/s/Rhett D. Ricard

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

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