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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas

The Honorable J. Michael Baxley, Special Referee

Appeal No. 2023-00173

Mark McAuley.....Respondent,

v.

Sunshine 11, LLC d/b/a Relax Inn, Usha Patel and Anjan Patel..... Defendants,

Of Whom

Sunshine 11, LLC d/b/a Relax Inn is the …… Appellant.

BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

1. DID THE SPECIAL REFEREE ABUSE HIS DISCRETION IN RULING THERE WAS NO GOOD CAUSE TO SET ASIDE THE DEFAULT JUDGMENT?

STATEMENT OF THE CASE

Around midnight on October 17, 2021, Mark McAuley ("Respondent") stopped at the Relax Inn in Dillon, South Carolina to rent a hotel room. The Relax Inn is owned and operated by Usha Patel and Anjan Patel. (R. p. 19 at ¶ 7). Usha Patel operated the front desk and gave Respondent a room and a room key. (R. p. 20 at ¶ 8). Unfortunately, the room Usha Patel assigned to Respondent was already occupied by another guest, Roderick Drawhorn ("Mr. Drawhorn"). (R. p. 20 at ¶ 9). Anjan Patel rented the room to Mr. Drawhorn earlier in the day. (R. p. 20 at ¶ 10). Respondent went to his hotel room and started to open the door with the key provided by Usha Patel. (R. p. 20 at ¶ 13). Upon opening the door, Mr. Drawhorn was startled and shot a gun through the door. (R. p. 20 at ¶ 14). Mr. Drawhorn's bullet, which he fired from inside the room Appellant rented to both Mr. Drawhorn and Respondent, struck Respondent. Respondent sustained injuries as a result.

On March 22, 2022, Respondent filed a Declaratory Judgment Action in the Dillon County Court of Common Pleas - case number 2022-CP-17-00126 ("Declaratory Judgment Action") - against Appellant Sunshine 11, LLC d/b/a Relax Inn, Usha and Anjan Patel, Northfield Insurance Company ("Northfield"), and Mr. Drawhorn. The Declaratory Judgment Action was removed to federal court by Northfield on July 22, 2022, and given case number 4:22-cv-02376-JD. Respondent filed a second lawsuit against Appellant and Defendants on July 29, 2022, in the Dillon County Court of Common Pleas - case number 2022-CP-17-00356 ("Tort Action"). On August 4, 2022, all defendants were personally served with a copy of the Summons and Complaint in the

Tort Action. (R. pp. 23-24). The Complaint alleged that Appellant was negligent because it was foreseeable that a guest could be injured by another guest if provided a key to a room that is already rented and occupied by another guest. (R. pp. 20-21 at ¶¶17-20).

On August 16, 2022, Respondent filed a Motion to Remand the Declaratory Judgment Action to state court, referencing by case number the filed Tort Action. (R. pp. 25-30). That motion was eventually denied, and the Declaratory Judgment Action remains pending in federal court. Defendants in the Tort Action failed to timely answer or appear, and on September 8, 2022, default was entered. (R. pp. 1-3). On September 23, 2022, Defendants were properly notified of the damages hearing. (R. pp.143-145). The damages hearing was held on October 25, 2022. Defendants failed to appear at the damages hearing. The Order of Default Judgment was issued on November 3, 2022. (R. pp. 4-11). Defendants received Notice of the Default Judgment on November 25, 2022. On December 20, 2022, Defendants filed a Motion to Set Aside Default Judgment. (R. pp. 32-38). On June 26, 2023, Special Referee J. Michael Baxley issued the Order Denying Defendants' Motion to Set Aside Default Judgment as to Sunshine 11, LLC d/b/a Relax Inn and Dismissing Individual Defendants with Prejudice. (R. pp. 12-17).

Appellant filed its Notice of this Appeal on July 21, 2023, and submitted its' initial brief on September 5, 2023.

STANDARD OF REVIEW

"The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial [court]." *Delta Apparel, Inc. v. Farina,* 406 S.C. 257, 750 S.E.2d 615, 619 (Ct. App. 2013). "The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Sundown v. Intedge Indus.*, 681 S.E.2d 885, 888 (2009). "An abuse of discretion in setting aside a default judgment [only] 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.*

ARGUMENT

I. The Special Referee did not abuse his discretion in finding there was no good cause to set aside the default judgment.

Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP. The 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). *Ricks v. Weinrauch,* 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct. App.1987). 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." Rule 60(b), SCRCP. "The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default." *Sundown,* 681 S.E.2d at 888.

The good cause standard for setting aside a default judgment requires, as a threshold burden, a party to put forth an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. *Id*. "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider the "Wham factors": (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)). If a defendant does not put forth a satisfactory explanation for the default – in other words, does not show good cause for failing to answer the complaint – then the analysis ends, and the court does not consider the Wham factors. *See Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct. App. 2013) ("Because we

find the master did not err in finding Owens failed to show good cause for failing to answer the complaint, we need not consider the Wham factors.); *Sundown*, 383 S.C. at 607, 681 S.E.2d at 888 (holding a court need only consider the Wham factors "[o]nce a party has put forth a satisfactory explanation for the default").

What constitutes good cause is limited. *See, e.g., Richardson v. P.V., Inc*., 383 S.C. 610, 618-19, 682 S.E.2d 263, 267 (2009) ("Negligence of an insurance company is imputed to a defaulting litigant and cannot constitute good cause to relieve Appellants from the entry of default."); *Sundown*, 383 S.C. at 609-10, 681 S.E.2d at 889 (holding "the law is clear that an attorney or insurance company's misconduct is imputable to the client"); *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) ("whether the attorney was negligent in failing to answer, however, is not critical, because even if the attorney were negligent in failing to answer the Complaint, his negligence would be imputed to the [defendants]."). *Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct. App. 2013) ("If reliance on one's own attorney is insufficient to show 'good cause,' then reliance on another defendant and his attorney is equally insufficient."); *Wilder v. Blue Ribbon Taxicab Corp*., 396 S.C. 139, 145-46, 719 S.E.2d 703, 706-07 (Ct. App. 2011) (it is not good cause where defendant's agent did "not recall ever personally receiving a copy"); *White Oak Manor, Inc. v. Lexington Ins. Co*., 407 S.C. 1, 11-12. 753 S.E.2d 537, 543 (2014) ("losing a summons and complaint is never a ground to set aside a default judgment."); *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 212, 456 S.E.2d 897, 900 (1995).

Appellant's argument to the Special Referee and now to this Court is, essentially, that Appellant was confused about the receipt of the second lawsuit because Appellant believed it to be pleadings related to the previously filed Declaratory Judgment action. The Special Referee

found multiple reasons why this argument should fail. First, Appellant was personally served with the new lawsuit, an unusual manner of delivery that should have alerted Appellant that this was a new document and not something Appellant had already received. Second, even a cursory review of the new pleadings would have shown that the pleadings were different from what was already received. Third, if Appellant had counsel for the Declaratory Judgment action, it would have required little effort to discuss the papers with that attorney for clarification. Fourth, even after receiving notice of the damages hearing, Appellant failed to take any action. (R. pp. 16-17).

Appellant cites *Ricks* to in support of its argument that there was good cause. (App. Br. p.7) (*citing Ricks v. Weinrauch*, 293 S.C. 372, 375, 360 S.E.2d 535, 537 (Ct. App. 1987)). However, the facts in *Ricks* are substantially different from the facts in this case. In *Ricks*, the defendant testified that she had personally received a copy of the Summons and Complaint and then made several efforts to ensure her suit was being handled. The defendant first called her attorney and then her insurance agent to request delivery of the suit papers upon the carrier. When the defendant discovered a problem with her insurance agent (closure and bankruptcy), the defendant called her attorney again, but before she could get ahold of the papers—which were in the trunk of her car at the mechanic shop—the 30-day period expired. In stark contrast to the defendant in *Ricks*, Appellant did not call their lawyer. Appellant did not call their insurer. Appellant did not attempt to contact opposing counsel's office. Appellant did not make any efforts and simply allowed the thirty-day period to pass and then ignored the notice of the damages hearing.

Appellant further argues that good cause was shown because of the stipulations of fact filed prior to the hearing with the Special Referee. App. Br. pp.3-5, 8-9. However, the stipulation simply contained Defendants' written testimony, in lieu of live testimony, as agreed to by both parties.

There was no intention for the stipulation to serve as an agreement to Appellant's mistake for purposes of setting aside the default judgment which the stipulation makes abundantly clear ("Plaintiff and Defendants agree that Usha Patel and Anjan Patel testify to the following, *but Plaintiff disputes and denies that these statements constitute mistake or inadvertence for purposes of setting aside the default judgment…*") (R. p. 40).

Even accepting paragraphs 4-6 of the stipulation as Appellant's testimony, Appellant still would not have set forth a valid reason as to their delay and thus not demonstrated good cause. It makes no difference whether these facts were stipulated to by the parties, as argued by Appellant, or whether there was live testimony to the same effect. It is irrelevant whether Appellant held this belief, what is relevant is that Appellant was personally served with a lawsuit and failed to take any action, even after receiving notice of the damages hearing. Appellant is a business and sophisticated entity. A simple phone call or any type of inquiry would have given Appellant the clarification it apparently desired. Instead, Appellant chose to do nothing and let the case go into default and the damages hearing proceeded without Appellant appearing or informing anyone about the notice. South Carolina courts have routinely held that a defendant's failure to understand the legal process is not a sufficient excuse and must suffer the consequences when a defendant fails to answer. *See Hill*, 547 S.E.2d at 897 (*quoting Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 402, 368 S.E.2d 687, 689 (Ct. App. 1988)). Most defendants are not lawyers, and the rules apply the same for all other defendants; mere confusion - especially without any attempt to seek any sort of clarification - does not support setting aside a default judgment. There is simply no good cause in this case and therefore the Wham factors are irrelevant to this analysis and the Special Referee did not abuse his discretion in finding there was no good cause.

II. The insurance company had a filed copy of the summons and complaint prior to the default.

Appellant argues, incredulously in the view of Respondent, that Respondent may have "*intentionally withheld information regarding the second lawsuit law suit [sic] from Northfield, ostensibly in the hope that they could obtain a default judgment against Appellant…*". App. Br. 9. The Special Referee found that Appellant's insurance carrier, Northfield, "in fact did receive written notice of the lawsuit by way of a legal filing made in the declaratory judgment action." (R. p. 17). The Special Referee further found that "there was no evidence presented or allegation made that Northfield did not actually receive notice of the lawsuit through their legal counsel in the declaratory judgment action." (R. p. 17). It is a complete fiction that Northfield was not aware of the filed lawsuit against its insured.

CONCLUSION

For the reasons stated, this Court should affirm the Special Referee's decision.

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CERTIFICATE OF COUNSEL

I certify the final Brief of Respondent complies with Rule 211(b), SCACR.

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