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SC Court of Appeals

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Daniel John MacDonald, Sr.
Special Referee Horry County

Appellate Case No. 2023-001920

RHH Land Investors, LLC.....Respondent,

v.

Leonard Ray Watts, et al.....Appellants,

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. DID THE SPECIAL REFEREE ERR IN DENYING APPELLANTS MOTION TO SET ASIDE DEFAULT JUDGMENT?
- II. DID THE SPECIAL REFEREE ERR IN DENYING APPELLANT'S MOTION TO RECONSIDER THE ORDER DENYING MOTION TO SET ASIDE DEFAULT JUDGMENT?

STATEMENT OF THE CASE

Respondents filed an action in Horry County and served Appellant with the Summons and Complaint on or about October 29, 2016. (Affidavit of Service).

Appellant filed a "pro se" Answer on or about December 20, 2016 in the Office of the Clerk of Court for Horry County, South Carolina. (Answer).

Respondent filed an Affidavit of Default on or about February 28, 2017 providing in part, "no answer, demurrer, or notice of appearance, has been **served** upon Plaintiff or their attorneys, by or on behalf of Defendant Watts." Emphasis added. (Affidavit of Default).

Respondent filed a Motion for Damages Hearing and Judgment by Default on or about May 25, 2017 along with a certification of mailing of said motion. (Motion for Damages Hearing and Default Judgment).

A hearing was held before The Honorable Benjamin H. Culbertson in Horry County, South Carolina on or about August 1, 2017 for which a Form 4 Order was issued Granting Plaintiff's Motion for Judgment by Default and Damages Hearing granting Respondent Judgment, joint and severable, against Appellants. (Form 4 Order).

Appellant received no notice of the hearing scheduled on August 1, 2017 before Judge Culbertson Motion for Judgment by Default and Damages hearing as required by Rule 5a, SCRCF other than certification of mailing of the motion but no notice of the

actual hearing date of August 1, 2017 was provided by the Respondent or the Clerk of Court. (Form 4 Order).

Appellant's first actual notice of the Judgment by Default and \$200,000.00 Judgment was upon Respondent's counsel filing an Affidavit and Petition for Supplemental Proceedings in the Horry County Court of Common Pleas on or about June 7, 2023 and served upon Appellant by delivery to his attorney on or about July 11, 2023. (Affidavit and Petition for Supplemental Proceedings).

Appellant did not receive actual notice of the Term of Non-Jury Court scheduled the week of July 31, 2017 and did not receive actual notice of the Order Granting Judgment by Default filed August 1, 2017 in the Horry County Clerk of Court's office. (Affidavit of Bridgett Williamson).

Appellant filed a Motion to Set Aside Judgment and the hearing was held on or about September 18, 2023 before duly appointed Horry County Special Referee, Daniel John MacDonald, Sr., who issued an Order Denying Motion to Set Aside Judgment which was filed on or about September 26, 2023. (Order Denying Motion to Set Aside Judgment).

Appellant filed a Motion to Reconsider the Order Denying Motion to Set Aside Judgment on or about September 28, 2023. (Notice of Motion and Motion to Reconsider Order Denying Motion to Set Aside Judgment).

A hearing was held on or about October 27, 2023 on the Appellant's Motion to Reconsider the Order Denying Motion to Set Aside Judgment before duly appointed Horry County Special Referee, Daniel John MacDonald, Sr., who issued an Order Denying Motion to Reconsider Order Denying Motion to Set Aside Default which was

filed on or about November 14, 2023. (Order Denying Motion to Reconsider Order Denying Motion to Set Aside Judgment).

Appellant filed the Notice of Appeal on or about December 12, 2023 and served all parties of record as required. (Notice of Appeal and Proof of Service.)

ARGUMENT

I. BECAUSE APPELLANT DID NOT RECEIVE ACTUAL NOTICE OF THE HEARING DATE FOR MOTION FOR JUDGMENT BY DEFAULT AND DAMAGES HEARING THE SPECIAL REFEREE ERRED IN DENYING APPELLANT'S MOTION TO SET ASIDE DEFAULT

Appellant clearly filed an Answer with the Horry County Clerk of Court in this matter. (Answer). Appellant was attempting to assert his rights to protect his interests by filing an answer “pro-se” in the best manner he could until such time as he could retain an attorney to assist him with defending the allegations brought by the Respondent. (Transcript at p. 7). Appellant filed the answer upon the belief that he was placing a notice requirement in the record and that the Respondent, at a minimum, or the Court would reach out to him prior to any further actions being taken that might affect his rights regarding the lawsuit. Appellant never received any notice of the Motion for Default Judgment and Damages Hearing from the Respondent or the Court or the Clerk of Court. (Affidavit of Bridgett Williamson). This, in and of itself, is a deprivation of rights that seriously undermines the most basic of procedural due process rights. See Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 642 S.E.2d 567 (2007) (the elements of due process are: (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to cross-examine and confront witnesses.; Ogburn-Matthews v. Ricefield Plantations, 332 S.C. 551, 505 S.E.2d 598 (Ct. App. 1998)

(procedural due process; SC DSS on behalf of Texas v. Holden, 319 S.C. 72, 459 S.E.2d 846 (1995). First and foremost, the deliberate and invidious discriminatory act of not providing notice, is in and of itself, sufficient to reverse and rescind the original order granted in default proceedings.

II. BECAUSE APPELLANT DID NOT RECEIVE ACTUAL NOTICE OF THE ORDER GRANTING JUDGMENT BY DEFAULT THE SPECIAL REFEREE ERRED IN DENYING MOTION TO RECONSIDER ORDER DENYING MOTION TO SET ASIDE DEFAULT

Assuming arguendo that the Appellant was in “default” for filing his Answer after the thirty (30) days allowed to move, answer or otherwise plead, the Appellant was still entitled to Notice of the Order Granting Judgment by default as required by the South Carolina Rules of Civil Procedure. Appellant did not receive actual notice of the Order/Form 4 until his was served on July 11, 2023. When a pro-se litigant files an Answer or other responsive pleading, it is the Clerk of Court’s responsibility to enter that party as a Pro Se litigant in the Case Parties of CMS and enter their contact information. (Affidavit of Bridgett Williamson at ¶ 4). This procedure is to ensure that all proper parties are notified of court hearings scheduled and to send copies of court orders filed. (Id. at ¶ 4) The Clerk of Court’s office inadvertently never entered Appellant into the system as a Pro Se litigant nor his contact information. (Id. at ¶ 4) It is incumbent upon the Clerk of Court to provide notice to all parties pro-se or otherwise of the entry of an order, default or otherwise. (Id. at ¶ 4). There was no notification of the hearing given to the Appellant, Leonard Ray Watts, by the Clerk’s office due to the Appellant not being entered into the CMS system properly. (Id. at ¶ 5). Further, a copy of the Order was not sent to the Appellant, Leonard Ray Watts. (Id. at ¶ 5). The Common Pleas Supervisor for

the Horry County Clerk of Court confirmed that Appellant was not properly served notice of the motion hearing for the term of Non-Jury Court scheduled the week of July 31, 2017 and was not mailed a copy of the Order Granting Judgment by Default filed August 1, 2017, by the Clerk of Court's office. (Id. at ¶ 6).

This, in and of itself, is a deprivation of rights that seriously undermines the most basic of procedural due process rights. See Clear Channel Outdoor v. City of Myrtle Beach, 372 S.C. 230, 642 S.E.2d 567 (2007) (the elements of due process are: (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to cross-examine and confront witnesses.; Ogburn-Matthews v. Ricefield Plantations, 332 S.C. 551, 505 S.E.2d 598 (Ct. App. 1998) (procedural due process; SC DSS on behalf of Texas v. Holden, 319 S.C. 72, 459 S.E.2d 846 (1995). First and foremost, the deliberate and invidious discriminatory act of not providing notice, is in and of itself, sufficient to reverse and rescind the original order granted in default proceedings.

CONCLUSION

For the reasons stated, this Court should vacate the Order Denying Appellant's Motion to Set Aside Default Judgment and Vacate the Order Denying Appellant's Motion to Reconsider the Order Denying Motion to Set Aside Default Judgment.

Respectfully submitted,

February 26, 2024

Conway, South Carolina

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