

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)
)
Mae McGruder,)
)
)
Plaintiff,)
)
-vs-)
)
Dollar General Corporation, d/b/a)
Dollar General Store #16677, Janie)
Davis, and Dolgencorp, LLC,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
2022-CP-43-00508

ORDER GRANTING PLAINTIFF'S
MOTION TO AMEND JUDGMENT

RECEIVED
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SC Court of Appeals

The Special Referee previously issued judgment against Dollar General Corporation, d/b/a Dollar General Store #16677 and Janie Davis on September 29, 2023 in the amount of \$925,000.00 actual damages. No punitive damages were awarded.

Plaintiff now moves for an order amending the judgment to add Dolgencorp, LLC ("Dolgencorp") as a Defendant. It is the Plaintiff's position that the correct and proper Defendant is Dolgencorp because this is the entity that was operating the store in which Plaintiff was injured, but judgment was entered in its trade name of Dollar General Corporation, d/b/a Dollar General Store #16677. Plaintiff submits that a judgment entered in the name under which a business is being operated may be amended by changing the name of the defendant to the name of the corporation which operates the business. Tri-Cnty. Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 241, 399 S.E.2d 779, 782 (1990).

Defendants oppose Plaintiff's motion and assert that the Special Referee does not have jurisdiction to rule on Plaintiff's Motion pursuant to Rules 205 and 241 SCACR because the previous orders of the Special Referee have been appealed. Defendants also argue that adding Dolgencorp as a Defendant is improper because doing so would be a substantive change of defendant. Finally, Defendants argue that an amendment would be improper because Dolgencorp was never served with the pleadings.

JURISDICTION

Rule 205, SCACR provides that "[N]othing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal." (Underline added.) More specifically, Rule 241, SCACR addresses the type of matters that are stayed by appeal: "[A]s a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision." (Underline added.)

I find that Plaintiff's motion is not a matter affected by the appeal in this case. The only issues on appeal are issues relating to the denial of Defendants' Motion for Relief from Entry of Default and the Order of Judgment. There are no issues on appeal regarding Plaintiff's Motion to Amend Judgment as the Special Referee has not previously addressed this issue. I find that whether Plaintiff is entitled to an Order Amending Judgment is not affected by the appeal in this case. I further find that the issues involved in the motion are not matters decided in the order or judgment on

appeal. Therefore, I find that the Special Referee has jurisdiction to hear Plaintiff's Motion to Amend Judgment.

AMENDING THE JUDGMENT

Defendants argue that judgment should not be amended to add Dolgencorp because Dollar General Corporation is a separate and distinct entity from Dolgencorp and Dolgencorp has never been properly served.

I find that Dollar General Store #16677, the store in which Plaintiff was injured was being operated in the trade name of Dollar General, and that Dolgencorp was the corporation operating Dollar General Store #16677. The complaint named Dollar General Corporation, d/b/a Dollar General Store #16677, and Janie Davis as Defendants.

I find that when Plaintiff named Dollar General Corporation and Dollar General Store #16677 as Defendants, identifying the Dolgencorp by its trade name and identifying actual store number, Dolgencorp knew or should have known which business and entity Plaintiff intended to sue. Dolgencorp received notice of the lawsuit when their store manager was served in Store #16677 and thus knew or should have known that they were the intended defendant. I further find that Defendants were not misled to their prejudice about the nature of the lawsuit and that Dolgencorp has never contended that they were confused about the intended target of the lawsuit or didn't know that the lawsuit was against them. I also find that Defendants have never offered an explanation of why they did not timely respond to the lawsuit.



Therefore, I find that Plaintiff is entitled to amend the judgment to add Dolgencorp as a defendant and Plaintiff's motion is granted. Therefore, Dolgencorp, LLC is hereby added as a Defendant in this case.

JUDGMENT

This matter came before the Special Referee on June 30, 2023 for a hearing on damages. This case arises from a slip and fall accident that occurred on October 29, 2019 at Dollar General Store #16677. Defendants are in default and as such the allegations of the complaint as to liability are deemed admitted. The Plaintiff had the burden of proving her damages with reasonable certainty, without leaving the amount of damages to speculation or conjecture.

The hearing on damages was conducted via Zoom. Present were Plaintiff Mae McGruder, her counsel John D. Clark and counsel for Defendants Trippett Boineau, III and Michael Trask. A court reporter was present and transcribed the hearing. Pursuant to the rules governing default hearings, Plaintiff presented her damages and testimony and defendants' participation was limited to cross-examination of Plaintiff's witnesses.

Plaintiff testified that it was a rainy day when she walked into Dollar General Store #16677 on Highway 441 in Sumter, SC and slipped on the wet floor and fell violently to the floor. Her grandson was with her. The fall was captured on video. Since liability is deemed admitted in this hearing, the video was not admitted into evidence but was used by Defendants for cross examination and impeachment purposes. The video clearly shows that the floor was wet and Plaintiff had a hard fall in

the foyer of Dollar General when her legs slipped out from under her as a direct result of the wet floor.

Ms. McGruder testified she went to the hospital on the day of the fall for injuries to her left knee, right hand, right shoulder and low back. She testified that she still uses a walker or cane as a result of her injuries.

Plaintiff also presented expert testimony of Dr. Rodney Alan, an orthopedic surgeon with McLeod Orthopedic. He testified that the fall at the Dollar General caused a "mechanical loosening" of Plaintiff's previously installed knee replacement and testified it was his opinion that the loosening was caused by the fall. He also testified that Plaintiff's subsequent left knee revision surgery after the accident at Dollar General was required as a result of the fall. The knee revision surgery involved the removal and replacement of the components of Plaintiff's knee from prior knee replacement. He also testified that Plaintiff's right hand was injured in the fall and that her back was injured in the fall. He testified that she had permanent back pain and stiffness. He further testified that Plaintiff had the current need for an assisting device (walker or cane) as a result of her condition and that the need for the device was permanent. He said she may need another knee replacement in 10-15 years. Dr. Alan also noted that the pre-accident replaced knee was about 13 years old at the time of her fall and a typical knee replacement lasted 20 years and with certain health conditions, such as diabetes, a knee replacement could last less than 20 years. While Plaintiff suffered from diabetes, there was no evidence that Plaintiff's knee replacement created

any issues for Plaintiff prior to her fall or that it would not have lasted her full life expectancy of the artificial knee.

Plaintiff presented the expert testimony of Jenn Massey, a life care planner. However, Ms. Massey did not testify in her capacity as a life care planner, and was qualified in the field of medical cost projections. She provided a cost projection report which she concluded was a conservative estimate of future medical care needed by Plaintiff regarding medical projections, based on her review of the medical records.

Finally, Plaintiff presented the testimony of Dr. Oliver Wood who testified to the economic loss of Plaintiff. He testified that she had a personal services loss, past and future medical treatment costs, and arrived at a present value loss of \$686,976.00.

The weight of the evidence is that Plaintiff would have needed a knee replacement revision at some point in the next several years whether she had this fall or not. She received her initial knee replacement in 2006 and Dr. Alan testified that the average life span was 20 years. Dr. Alan testified that Plaintiff might be subject to a shorter span due to her health conditions. The weight of the evidence supports that Plaintiff suffered significant pain from the injuries received in this fall and that the fall hastened her knee revision surgery and for this she is entitled to damages. Dr. Alan further testified that Plaintiff's injuries were permanent and that the use of an assisting device such as a cane or walker was permanent.

Based on this testimony, I find that Plaintiff has met her burden of proof by a preponderance of the evidence and is entitled to damages for pain, suffering, bodily injury, mental distress and medical bills in the amount of \$925,000.00 as a direct and

proximate result of the accident. I find that there was insufficient clear and convincing evidence on which to base an award of punitive damages.

THEREFORE, JUDGMENT TO BE ENTERED IN FAVOR OF PLAINTIFF AGAINST DEFENDANTS IN THE AMOUNT OF Nine Hundred Twenty Five Thousand Dollars (\$925,000.00) ACTUAL DAMAGES.

IT IS FURTHER ORDERED THAT DOLGENCORP, LLC IS ADDED AS A DEFENDANT IN THIS CASE.

IT IS SO ORDERED.



By: Special Referee
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Myrtle Beach, South Carolina
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