

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)
)
 Rachel Sanders,)
)
)
)
 Plaintiff,)
)
 v.)
)
 Novant Health, Inc., Terracon Consultants,)
 Inc., Panther Heating and Cooling, Inc.,)
 Modern Construction of South Carolina,)
 LLC, Southern Realty, LLC, and, in their)
 Individual capacities, George White, MD,)
 Nicholas Tuttle, MD, and Malcolm Marion,)
 MD,)
)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 SIXTEENTH JUDICIAL CIRCUIT
 CASE NO.: 2019-CP-46-1258

ORDER

RECEIVED
Jun 20 2024
SC Court of Appeals

Hearing Date: April 24th, 2024, @ 11:00 A.M.
 Hearing Judge: Grace Gilchrist Knie
 Counsel for Plaintiff: Donald Gist, Erica K. McCrea, Kyle T. Watson
 Counsel for Defendant: Don R. Terry
 Court Reporter: Shannon E. McGilberry

This matter was before the Court on Wednesday, April 24, 2024, at 11:00 a.m. upon the Defendant Modern Construction Services, LLC's Motion for Relief From Judgment and To Set Aside Entry of Default and Default Judgment filed with the Court on March 19, 2024. Present representing the Plaintiff was Donald Gist, Esq., Erica K. McCrea, Esq., and Kyle T. Watson, Esq. Don R. Terry, Esq. was present representing the Defendant Modern Construction Services, LLC. The Court Reporter was Shannon E. McGilberry. The Court acknowledges and appreciates the amount of research and preparation for the hearing by Counsel, as well as, the professionalism of Counsel in their presentations to the Court.

PROCEDURAL HISTORY:

The procedural history as presented to the Court is as follows: This action was commenced with the filing of Summons and Complaint on April 8, 2019. The Summons and Complaint were served on Defendant Modern Construction of SC, LLC's registered agent Mr. Stevens in Edgefield, SC, on April 15, 2019. However, Plaintiff did not receive an Answer to the Complaint, and to ensure proper service, sent the Summons and Complaint to an additional address, via certified mail, restricted delivery to 5900 Harris Technology Boulevard, Suite D, Charlotte, N.C. 28269, to registered agent Tracy Snowdy on July 8, 2021. Plaintiff received the signed acknowledgement of service receipt, signed "Modern Construction" without a date included. Plaintiff filed its initial Motion for Default on January 11, 2022. Plaintiff mailed a copy of the Motion and accompanying Affidavit to registered agent Mr. Stevens in SC. Shortly thereafter, Plaintiff's Counsel received a call from Mr. Stevens, who informed Plaintiff's Counsel that "Modern Construction", located at 5900 Harris Technology Boulevard, Suite D, Charlotte, N.C. 28269 was the intended party. Plaintiff filed a Motion to Vacate the Judgment on March 30, 2022. Plaintiff filed an Amended Motion for Default on April 1, 2022. A copy of Motion for Default and accompanying Affidavit were mailed to registered agent Tracy Snowdy at 5900 Harris Technology Boulevard, Suite D, Charlotte, N.C. 28269. An Order for Entry of Default against Defendant Modern Construction Services, LLC, was issued on May 24, 2022, by the Honorable D. Craig Brown with a requirement that a Default Judgment hearing be scheduled to determine the amount of damages and costs. On February 17, 2023, the Clerk of Court's office for York County mailed registered agent Snowdy notice of the March 8, 2023, damages hearing, On March 8, 2023, the Court held a damages hearing. On March 23, 2023, the Court, the Honorable William A. McKinnon, entered an Order for Judgment by Default.

Counsel for Defendant Modern Construction Services, LLC, filed a Motion for Relief From Judgment and Order and Motion To Set Aside Entry of Default and Order of Default Judgment on March 19, 2024. At issue in the Motion and in dispute between the parties is whether the Plaintiff properly served Defendant Modern Construction Services, LLC, with the Summons and Complaint.

ARGUMENTS PRESENTED:

In support of the Motion, Defendant Modern Construction Services, LLC (hereinafter “MCS”) argues that the Entry of Default and all Orders flowing from Default Judgment must be corrected by way of Rule 60 or vacated and set aside due to Clerical Mistake per Rule 60(a) and Mistake, Inadvertence, Excusable Negligence and Fraud per Rule 60(b). Additionally, MCS argued that it should be relieved of the Judgment Order by way of the Judgment Order being vacated and/or set aside because the Motion was filed timely and MCS has Meritorious Defenses such as Plaintiff (1) failed to name MCS as a party, (2) failed to serve MCS with the summons and complaint, (3) failed to seek leave prior to changing a party name in the pleadings, (4) failed to seek leave prior to changing a party name in the Judgment Order, (5) failed to commence this civil action against MCS as required by Rule 4 of the SCRCPP, and (6) failed to obtain proper service on MCS, a North Carolina entity. The summons in this case was issued for Modern Construction of South Carolina, LLC, not Modern Construction Services, LLC. Finally, MCS argued that there would be no prejudice caused by way of Relief Sought.

In summary, Defendant MCS requests that the Court (1) vacate and/or set aside the Judgment Order against MCS, or in the alternative for the Judgment Order to be revised to name Modern Construction of South Carolina, LLC” only; (2) that the entry of default and default judgment against MCS, if any, be vacated and/or set aside or to be revised to be against “Modern

Construction of South Carolina, LLC” only; (3) for relief to MCS from the Judgment; (4) alternatively to the aforementioned relief, for the entry of default and default judgment against MCS to be set aside and/or vacated, and to the extent the Court deems MCS has been properly served, grant MCS thirty (30) days to file an Answer and/or other responsive pleading; and (5) for an award of the reasonable attorney’s fees and costs incurred in making and prosecuting the Motion.

Plaintiff argues that Plaintiff properly served the Defendant MCS under Rule 4, SCRPC, that Plaintiff is entitled to rely upon the information provided by the Office of the Secretary of State and Defendant made no effort to appear and correct its erroneous name. In summary, Plaintiff argues that MCS’s Motion for Relief should be denied. Plaintiff has properly served MCS, relied on provided public information in doing so, and incurred significant cost in litigating this matter. MCS cannot now, when brought to task for its lack of response, deny any knowledge of Plaintiff’s Complaint, in the face of debt collection. MCS, simply did not respond and the Plaintiff’s judgment should be affirmed. In support of Plaintiff’s position Plaintiff presented to the Court as attachments to the Memo in Opposition two Exhibits, Exh, A. A copy of the certified restricted mailing with completed, processed Domestic Return Receipt card, the receipt of payment, and tracking receipt from the USPS and copy of enclosed correspondence of July 7, 2021, with addressee: Modern Construction Services, LLC, Tracy Snowdy, Registered Agent for Modern Construction Services, LLC, 5900 Harris Technology Blvd., Suite D, Charlotte, NC 28269, along with the supporting documentation from the Secretary of State’s Office. And Exh. B. A copy of the Clerk of Court’s Notice of Hearing dated February 17, 2023, mailed to Modern Construction of South Carolina, LLC, 5900 Harris Technology Boulevard;

Suite D Charlotte, NC 28269 informing Defendant of the Damages Hearing scheduled for March 8, 2023, at 9:30 A.M.

APPLICABLE LAW:

The applicable law is as follows: Pursuant to Rule 4(d)(1), SCRCPP, service shall be made as follows: Rule 4(d) (3) SCRCPP provides:

(d)(3) Corporations and Partnerships. Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

Rule 4(d)(8) SCRCPP provides:

Service of a summons and complaint upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule may be made by the plaintiff or by any person authorized to serve process pursuant to Rule 4(c), including a sheriff or his deputy, by registered or certified mail, return receipt requested and delivery restricted to the addressee.

“Rule 4, SCRCPP, serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action.” Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 456 S.E.2d 897 (1995).

The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle her to relief. Bowers v. Bowers, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). Exacting compliance with the rules is not required to effect service of process. Roche, 318 S.C. at 209-10, 456 S.E.2d at 899. “Rather, [the Court must] inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” Id. at 210, 456 S.E.2d at 899. A presumption of proper service exists when the rules governing service are followed. Roche, 318 S.C. at 211, 456 S.E.2d at 900 (citation omitted).

Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP. [T]he standard for granting relief under Rule 60(b) is more rigorous than under Rule 55(c), and ... an entry of default may be set aside for reasons that would be insufficient to relieve a party from a default judgment. Campbell v. City of North Charleston, 431 S.C. 454, 848 S.E.2d 788 (Ct. App. 2020).

Rule 60(b), SCRCP provides:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court...

“On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding [because] . . . the judgment is void.” A judgment is void if a court acts without personal jurisdiction. Thomas & Howard Co. v. T.W. Graham & Co., 318 S.C. 286, 457 S.E.2d 340 (1995). A court generally obtains personal jurisdiction by the service of a summons. Ex parte S.C. Dep’t of Revenue, 350 S.C. 404, 566 S.E.2d 196 (Ct. App. 2002).

Whether to grant or deny a motion for relief from judgment on basis of mistakes, inadvertence, excusable neglect, newly discovered evidence or fraud lies within the sound discretion of the judge; the Supreme Court's standard of review, therefore is limited to whether there was an abuse of discretion. BB&T v. Taylor, 369 S.C. 548, 633 S.E.2d 501 (2006).

CONCLUSION:

After consideration of the record, arguments made, exhibits presented, and the applicable law, the Court finds and concludes as follows: that Defendant Modern Construction Services, LLC's, Motion for Relief From Judgment and Order and Motion To Set Aside Entry of Default and Order of Default Judgment filed with the Court on March 19, 2024, should be and is therefore, respectfully denied.

IT IS SO ORDERED.

Honorable Grace Gilchrist Knie
Resident Circuit Court Judge
Seventh Judicial Circuit

Date: May 15, 2024



York Common Pleas

Case Caption: Rachel Sanders , plaintiff, et al VS Novant Health Inc , defendant, et al
Case Number: 2019CP4601258
Type: Order/Other

IT IS SO ORDERED.

S/GRACE GILCHRIST KNIE - 2760