

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	
Andrew E. Lewis,)	C. A. No. 2022-CP-23-05612
)	
Plaintiff,)	
)	
v.)	ORDER DENYING DEFENDANTS'
)	MOTION TO SET ASIDE DEFAULT
Lakeview Loan Servicing, LLC and)	
Loan Care LLC,)	
)	
Defendants.)	
_____)	

This matter came before the Court on May 31, 2023 on Defendants Lakeview Loan Servicing, LLC and Loan Care LLC (collectively “Defendants”)’s Motion to Set Aside Default. Based on the pleadings, motions, memoranda and the arguments made by counsel for the parties at the hearing, Defendants’ Motion to Set Aside Default is **DENIED** as set forth herein below.

PROCEDURAL HISTORY

Plaintiff initiated this action with the filing of his Summons and Complaint on October 13, 2022. Defendant Loan Care LLC was served said Summons and Complaint on October 17, 2022 by and through its registered agent, CT Corporation System. Defendant Lakeview Loan Servicing, LLC was served said Summons and Complaint on October 18, 2022 by and through its registered agent, Corporation Service Company. On December 1, 2022, Plaintiff filed Affidavits of Default against each of the Defendants for their failure to plead or otherwise respond to Plaintiff’s Complaint. On December 2, 2022, Plaintiff moved for a hearing to determine the amount of Plaintiff’s damages and the damages hearing was then set for February 24, 2023. On February 17, 2023, Defendants filed their Motion to Set Aside Default.

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FINDING OF FACTS

Defendants were properly served with Plaintiff's Summons and Complaint on October 17 and 18, 2022, respectively. On January 12, 2023, eighty-six (86) days after service, external managing litigation counsel for Defendants emailed counsel for Plaintiff acknowledging that he was referred Plaintiff's complaint and seeking leave to respond. Thereafter, also on January 12, 2023, Plaintiff's counsel, Christian H. Thorndike, Esq., spoke with Defendants' external managing litigation counsel and advised him that Defendants were in default. Defendants filed their Motion to Set Aside Default on February 17, 2023.

LEGAL STANDARD

Rule 55(c), *SCRCP*, provides that a court may only set aside an entry of default "for good cause shown." The decision whether to set aside any entry of default lies solely within the sound discretion of the trial court. Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009). In order to justify relief from entry of default, a Defendant "must provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Id.*, at 607, 888. "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider" the three factors enunciated in Wham v. Shearson Lehman Bros., 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989). *Id.* The three factors enumerated in Wham are as follows: (1) the timing of the motion for relief; (2) whether the defendant has meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. Wham, *supra*.

If a party in default has failed to put forward a satisfactory explanation, then the trial court need not address the Wham factors. Campbell v. City of N. Charleston, 431 S.C. 454, 462, 848 S.E.2d 788, 793, note 5 (Ct. App. 2020), reh'g denied (Oct. 29, 2020). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the

record for the finding of the lack of good cause. Dixon v. Besco Eng'g, Inc., 320 S.C. 174, 179, 463, S.E.2d 636 (Ct. App. 1995).

LAW AND ANALYSIS

As their basis for showing good cause, the Defendants set forth that: i) “LoanCare was making adjustments on its internal litigation tracking procedures, which caused Defendants to inadvertently miss their answer date, despite having policy and procedures in place to track and manage litigation”; ii) “Defendants' failure to timely answer the Complaint is not the result of an intentional disregard of the Complaint and/or the judicial system”; and iii) “Defendants retained counsel as soon as it discovered the Complaint” *See Defendants’ Motion to Set Aside Default*, ¶¶ 14, 15 and 16. In light of the sequence of events reiterated above, this Court finds Defendants’ bases and explanation insufficient to satisfy the good cause standard of Rule 55(c) *SCRCP*. Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) (*holding that good cause would not be established whether Defendants failed to ask their attorney to file an answer or whether the attorney was negligent in failing to answer*); Dixon v. Besco Eng'g, Inc., 320 S.C. 174, 178-79, 463 S.E.2d 636, 638-39 (Ct. App. 1995) (*affirming the trial court's finding that the defendant's failure to recognize a deadline did not constitute good cause to set aside the entry of default*); Regions Bank v. Owens, 402 S.C. 642, 648-49, 741 S.E.2d 51, 54-55 (Ct. App. 2013) (*finding evidence supported the master's finding that Owens failed to show good cause for failing to answer the complaint because although he asserted another defendant told him he had hired an attorney and would take care of it, the other defendant disputed this claim and Owens failed to present any evidence showing “he took any steps to protect himself by contacting either [the other defendant] or [the other defendant's] attorney to confirm an answer would be filed on his behalf”*); Nelson v. Coleman Co., 41 F.R.D. 7, 9-11 (D.S.C. 1966) (*finding the failure*

to timely forward a complaint within a company's internal departments was not good cause to warrant relief from default).

Furthermore, in addition to failing to satisfy the good cause standard of Rule 55(c), *SCRCP*, Defendants have also failed to satisfy the Wham factors for being dilatory in filing their motion for relief thirty-six (36) days after being advised they were in default. Wham, *supra*.

CONCLUSION

Based on the foregoing, Defendants have failed to set forth good cause as required by Rule 55(c), *SCRCP*, and failed to satisfy the Wham factors in order to be entitled to relief from default. Defendants' Motion to Set Aside Default is, accordingly, **DENIED**.

IT IS SO ORDERED.



Greenville Common Pleas

Case Caption: Andrew E Lewis vs. Lakeview Loan Servicing Llc , defendant, et al

Case Number: 2022CP2305612

Type: Order/Other

So Ordered

s/ Edward W. Miller