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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Appellate Case No. 2024-0001724
Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

Respondent/Appellant,

v.

ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS; CASA BAHARI, LLC; DARLINGTON 48 UNIT, LLC; AND JOHN DOE, INDIVIDUALLY, AND AS MANAGER/GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS, DEFENDANTS

OF WHICH CASA BAHARI, LLC IS THE APPELLANT/RESPONDENT.

FINAL REPLY BRIEF OF APPELLANT/RESPONDENT CASA BAHARI, LLC

/s/ Mary Harriet Moore

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I. THE CIRCUIT COURT ABUSED ITS DISCRETION BY REFUSING TO RECONSIDER AND SET ASIDE THE DEFAULT JUDGMENT ORDER.

Respondent/Appellant Aszane Cruz (hereinafter "Respondent") incorrectly argues that Appellant did not show mistake, inadvertence, excusable neglect, fraud, misrepresentation, or misconduct by an adverse party, or that the judgment is inequitable and should not have prospective application in order to have the default judgment against Appellant set aside.

Specifically, Respondent contends that Appellant "falsely alleges that Respondent and her counsel acted in bad faith by seeking the default judgment because of alleged knowledge that Appellant was not the property owner." (Initial Brief of Resp., p. 10). However, this knowledge is not "alleged." It is a fact admitted by Respondent and her counsel. At the hearings on March 13, 2024, and August 21, 2024, Respondent's counsel admitted to receiving communication from Appellant's counsel, prior to the entry of default and default judgment, advising her that Appellant was not the owner of the subject property at the time of Respondent's alleged injuries. (R. p. 00047; R. p. 00065). That communication included a deed showing that Appellant did not acquire the property until June 13, 2023. Respondent was allegedly injured on April 9, 2022. Additionally, Respondent admitted this again in her memorandum of law in opposition to Appellant's Motion to Reconsider. (R. p. 00156). Respondent and her counsel simply ignored these facts and continued their pursuit for default judgment.

Secondly, Respondent incorrectly argues that Appellant's references to the *Hood v. United Services Auto Ass'n* case and to Respondent's pursuit of default judgment against Defendant Darlington 48 Unit, LLC (hereinafter "Darlington 48") are irrelevant. The *Hood* case specifically holds that ""[a]ttorneys may have 'an obligation to provide zealous representation' to their client,

but they also have 'a corresponding obligation to opposing parties, the public, [their] profession, the courts, and others to behave in a civilized and professional manner in discharging [their] obligations to [their] clients.'" *Hood v. United Services Auto Association*, 2025 WL 45711 (SC 2025). Thus, while Respondent's counsel has an obligation to represent her client, she also has an obligation to opposing parties, including Appellant, to do so in a professional manner which includes her Rule 11 obligations to have a good faith basis to pursue claims against Appellant. *See* S.C. R. CIV. PRO. 11 ("The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.").

Additionally, Appellant's references to Defendant Darlington 48 are relevant because it appears that Respondent and her counsel have improperly pursued default judgment against Defendant Darlington 48 as well. Respondent first filed a Petition for Publication to serve Defendant Darlington 48 on December 28, 2023. (R. pp. 00169-00176). Respondent received an Order for Publication; however, Respondent has never filed an Affidavit of Service by Publication for Defendant Darlington 48. Instead, over four months later, Respondent filed an affidavit of service on the alleged registered agent of Defendant Darlington 48 – Robert Lambert. (R. p. 00166). However, Mr. Lambert vehemently denies that he is the registered agent for Defendant Darlington 48 or that he has anything to do with Defendant Darlington 48 at all. Instead of addressing these inaccuracies, Respondent and her counsel have continued to pursue default judgments against defendants while lacking a good faith basis to do so. *See* S.C. R. CIV. PRO. 11 ("The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and

belief there is good ground to support it; and that it is not interposed for delay."). If Robert Lambert is not the registered agent for Defendant Darlington 48, Respondent has not properly served Defendant Darlington 48 yet has continued to pursue a default judgment against it. Thus, reference to Respondent's pursuit of default judgment against Defendant Darlington 48 shows what appears to be a pattern of misconduct by Respondent and supports Appellant's argument that the default judgment should be set aside for mistake, inadvertence, excusable neglect, fraud, misrepresentation, or misconduct by an adverse party, or because the judgment is inequitable and should not have prospective application

Finally, Respondent's argument that the default judgment remains equitable and should have prospective application must fail. The default judgment is not equitable as Respondent has moved for default judgment damages hearings against Defendant Darlington 48 and Defendant Arete Wyndham Property Owner, LLC (hereinafter "Defendant Wyndham"). Essentially, Plaintiff is seeking to recover damages three times: once against Appellant, once against Defendant Darlington 48, and once against Defendant Wyndham. Respondent incorrectly cites to a portion of the circuit court transcript which in actuality states that Respondent is not entitled to additional damages hearings, and which supports Appellant's argument that the judgment is no longer equitable and should not have prospective application. The full record from the hearing states:

> The fact that - - I personally don't think that you're entitled to another damages hearing for - - I think the damages were for a concrete entity, and we've already established what that is. As far as what the liability is, that's a different thing, and how they divide it. Why do you think you're entitled to another damages hearing?

(R. p. 00071, lines 23-25- p.00072, lines 1-4). Thus, the circuit court realized that Respondent's actions in pursuing three different default judgments presented a real issue as to how to determine liability and divide the award. Thus, Respondent incorrectly argues that the default judgment remains equitable and should have prospective application.

II. THE CIRCUIT COURT ERRED IN FINDING THAT THE APPELLANT WAS PROPERLY NOTIFIED OF THE DAMAGES HEARING.

Respondent incorrectly states that the record shows that Appellant was given proper notice of the damages hearing. Rule 5(a) requires notice of the damages hearing must be provided to all defaulting parties. S.C. R. CIV. PRO. 5(a). Appellant received the letter notifying it of the damages hearing on March 14, 2024 – the day after the hearing. Respondent has not offered any affidavit of service, certificate of service, or evidence proving otherwise. Additionally, Respondent has not presented any affidavit of service, certificate of service, or evidence showing that it notified the other defendants, Defendant Darlington 48 and Defendant Wyndham, of the damages hearing who, pursuant to Rule 5, were required to receive notice. Thus, notice of the damages hearing was insufficient and the default judgment against Appellant should be vacated. *See* S. C. R. CIV. PRO. 5(a) ("No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and ***notice of any trial or hearing on unliquidated damages shall also be given to parties in default***.") (emphasis added).

CONCLUSION

For the foregoing reasons, Appellant respectfully requests that this Court reverse the circuit court and vacate the default judgment against Appellant Casa Bahari, LLC.

[SIGNATURE ON FOLLOWING PAGE]

/s/ Mary Harriet Moore

_____

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