THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Edward W. Miller, Circuit Court Judge
G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2024-002191
Trial Court Case No. 2022-CP-23-05612

Lakeview Loan Servicing, LLC and Loan Care LLC,……....Appellants,

v.

Andrew E. Lewis,……...Respondent.

RESPONDENT ANDREW E. LEWIS' FINAL BRIEF

Respectfully submitted,

/s/ Townes B. Johnson III
Townes B. Johnson III (SC Bar# 75412)
Christian H. Thorndike (SC Bar# 103697)
TOWNES B. JOHNSON III, LLC
PO BOX 9246
GREENVILLE, SC 29604
PH: (864) 757-4899
tjohnson@sc.legal

Attorney for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUES ON APPEAL

I. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING APPELLANTS' MOTION TO SET ASIDE DEFAULT UNDER RULE 55(C), SCRCP.

II. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN AWARDING DAMAGES BASED ON THE WELL-PLED COMPLAINT AND TESTIMONY AT THE DAMAGES HEARING.

III. WHETHER RESPONDENT'S CLAIMS ARE BARRED UNDER COLLATERAL ESTOPPEL, RES JUDICATA, OR JUDICIAL ESTOPPEL (DE NOVO REVIEW).

IV. WHETHER THE TRIAL COURT PROPERLY REJECTED APPELLANTS' UNCLEAN HANDS DEFENSE.

V. WHETHER THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING THE RULE 59(E) MOTION TO ALTER OR AMEND THE JUDGMENT.

INTRODUCTION

This case concerns the proper exercise of judicial discretion and the integrity of final judgments. The Circuit Court acted within the bounds of Rule 55(c), SCRCP, in denying relief from default and in entering judgment after a fully supported damages hearing. Appellants Lakeview Loan Servicing, LLC and Loan Care LLC ("Appellants")' repeated inattention, unsupported claims of administrative error, and post hoc attempts to reopen a final judgment undermine the principles of diligence and finality at the heart of the South Carolina Rules of Civil Procedure.

Appellants conflate the foreclosure proceeding from 2017 with this independent action arising from their servicing misconduct. The issues here concern servicing negligence, misrepresentation, and contractual breach—not the validity of the foreclosure judgment. The Circuit Court properly denied the motions to set aside default and to alter or amend judgment. The orders below should be affirmed.

STATEMENT OF THE CASE

Respondent Andrew E. Lewis ("Respondent") filed this action on October 12, 2022, asserting claims for breach of contract, negligent misrepresentation, fraud, constructive fraud, and violation of the South Carolina Unfair Trade Practices Act. (R. pp. 22-29). Appellants were served on October 17 and 18, 2022 and their responses were due November 21 and 22, 2022. (R. pp. 30-31, R. pp. 32-33). On December 1, 2022, without a response from Appellants, Respondent filed his Affidavits of Default and the Clerk entered default. (R. pp. 34-35, R. pp. 36-37).

Appellants' counsel actively involved himself in the suit by January 12, 2023, but Appellants delayed another thirty-six days before filing any motion. (R. p. 4, R. pp. 46-120). The Circuit Court held a hearing on May 31, 2023, and denied the Motion to Set Aside Default by

written order dated July 6, 2023. (R. pp. 3-7). The Court found Appellants' claimed "internal tracking error" unsupported by affidavit or evidence and insufficient under Rule 55(c). *Id.* The court also found the *Wham* factors weighed against relief. *Id.* Appellants' Rule 59(e) motion to alter or amend was denied on June 26, 2024. (R. pp. 8-9).

The Court later conducted a damages hearing on September 5, 2024, at which Respondent testified to $500,393 in total damages: $461,393 in lost equity, $18,000 in moving and storage costs, and $21,000 in uncredited payments. (R. pp. 13-21). Judgment was entered for that amount on October 21, 2024. *Id.* Appellants' subsequent Rule 59(e) motion to alter or amend was summarily denied on November 19, 2024, under Rule 59(f), SCRCP. (R. pp. 10-12). This appeal ensued. (R. pp. 255-280).

STATEMENT OF FACTS

A. FACTS DEEMED ADMITTED

On or about June 10, 2016, Respondent closed on the purchase of the real property located at 4 Glassy Wing Cit, Greenville, SC 29607 (the "Subject Property"). (R. p. 14). Shortly thereafter, Respondent's mortgage was sold to Lakeview. *Id*. Towards the beginning of 2017, Respondent missed a mortgage payment. *Id*. On or about September 21, 2017, Respondent received a letter allowing him to catch up on his mortgage. *Id*. Respondent attempted to catch up on the mortgage. *Id*. However, on or about February 14, 2018, Respondent received a letter from Loan Care noting a deficiency of $2,938.66 in Respondent's escrow account. *Id*. On or about April 27, 2018, the Greenville County Master in equity grants the sale of the property at auction on June 4, 2018. *Id*.

On or about June 4, 2018, the sale is postponed by Appellants as Respondent works out a trial payment arrangement after Loan Care's acceptance of a new modification. *Id*. After this

acceptance, the Subject Property is sold at the August 1, 2018, auction. *Id*. On or about August 24, 2018, Appellants filed a motion to rescind the foreclosure sale. *Id*.. However, due to the sale of the Subject Property, Respondent's account and loan modification were closed by Appellants. (R. p. 15). Over the course of the following months, Respondent kept in constant communication in an attempt to figure out his modification payments. *Id*. Appellants continually failed to send Respondent modification documents so that he could resume paying. *Id*.

On or about January 18, 2019, Respondent received the new mortgage agreement package from Appellants. *Id*. The new mortgage agreement package increased the monthly payments and added an additional ten years, making it a Forty (40) year mortgage. *Id*. Over the next few years, Respondent continually attempted to work with Appellants to pay his mortgage. *Id*. This included sending over new documentation as requested by the Appellants. *Id*. Even though Respondent's original modification was accepted and terminated improperly by Appellants, Appellants continued to deny Respondent's modification attempts. *Id*.

Respondent contracted with Appellants for the remodification of Respondent's mortgage. *Id*. Respondent made payments according to the contract. *Id*. Appellants breached the agreement with Respondent by continually forcing him to reapply for a loan modification after it had already been approved and unjustly terminated. *Id*. As a direct and proximate result of Appellants' breach, Respondent suffered actual and consequential damages. *Id*.

In negotiating the loan modification with Respondent, Appellants represented that the loan modification was reinstituted after the unjust foreclosure. *Id*. Appellants knew the representations made were false. *Id*. Defendant had a pecuniary interest in making these representations. *Id*. Appellants owed Respondent a duty to see that truthful and accurate information was communicated to Respondent. *Id*. Appellants breached their duty by failing to exercise due care.

Id. Respondent justifiably relied upon Appellants to communicate truthful information and justifiably relied upon Appellants' representations. *Id*. As a direct and proximate result of Respondent's reliance upon Appellants' misrepresentations, Respondent suffered a pecuniary loss in the form of actual, consequential, and special injuries. (R. p. 16). Appellants' conduct was willful and intentional. *Id*.

In negotiating the loan modification with Respondent, Appellants represented that the loan modification was accepted. *Id*. The representations Appellants made regarding the modification were material. *Id*. The representations Appellants made regarding the modification were false. *Id*. Appellants knew the representations were false. *Id*. Appellants made the representations with knowledge of their falsity and with a reckless disregard for their falsity. *Id*. Appellants intended that the representations be acted upon. *Id*. Respondent was ignorant of the falsity of Appellants' representations and relied on the representations' truth. *Id*. Respondent was right to rely on the representations' truth. *Id*. As a consequent and proximate result of Appellants' fraud, Respondent suffered a pecuniary loss in the form of actual, consequential and special injuries. *Id*. As a consequent and proximate result of Appellants' constructive fraud, Respondent suffered a pecuniary loss in the form of actual, consequential and special injuries. *Id*.

Appellants are in the business of offering mortgages and loans, such as Respondent's loan modification. *Id*. Appellants fraudulently and deceptively continued to deny Respondent's loan modification after accepting it. *Id*. As a result of Appellants' fraudulent and deceptive acts, suffered financial hardships and damage to his credit score. *Id*.. These fraudulent and deceptive acts have led to great expense for Respondent. *Id*. Appellants' business of mortgages and loans creates the potential for repetition of these fraudulent, unfair and deceptive acts. *Id*. Since these

fraudulent and deceptive acts can easily be repeated, it is offensive to public policy. *Id*. As a proximate cause of Appellants' fraudulent and deceptive acts, Respondent was damaged. *Id*.

B. FINDINGS OF FACT

Respondent lost Four Hundred Sixty-One Thousand, Three Hundred Ninety-Three Dollars ($461,393.00) in equity he had in the Subject Property as shown by the June 2020 appraisal of $801,000.00 and the amount owed of $339,607.00. (R. p. 17). Respondent further suffered Eighteen Thousand Dollars ($18,000.00) in moving and storage expenses and Twenty-one Thousand Dollars ($21,000.00) in payments on his mortgage of which he was not given credit for. *Id.*

Appellants were properly served with Respondent's Summons and Complaint on October 17 and 18, 2022, respectively. (R. p. 4, R. pp. 30-31, R. pp. 32-33). On January 12, 2023, eighty-six (86) days after service, external managing litigation counsel for Appellants emailed counsel for Respondent acknowledging that he was referred Respondent's complaint and seeking leave to respond. (R. p. 4). Thereafter, also on January 12, 2023, Respondent's counsel, Christian H. Thorndike, Esq., spoke with Defendants' external managing litigation counsel and advised him that Appellants were in default. *Id.* Appellants filed their Motion to Set Aside Default thirty-six days (36) later on February 17, 2023. (R. p. 4, R. pp. 46-120).

STANDARD OF REVIEW

A motion to set aside default under Rule 55(c) is committed to the sound discretion of the trial court and will not be disturbed absent a clear abuse of that discretion. *Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.*, 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006). An abuse occurs only when the ruling is controlled by an error of law or wholly lacks evidentiary support.

Sundown Operating Co. v. Intedge Indus., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). Findings on damages following default are reviewed under the same deferential standard. *Id*.

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN DENYING APPELLANTS' MOTION TO SET ASIDE DEFAULT

A. APPELLANTS FAILED TO SHOW GOOD CAUSE UNDER RULE 55(C)

A court may set aside an entry of default for good cause shown. Rule 55(c), SCRCP. Whether good cause is established is within the sound discretion of the Court. *Wham v. Shearson Lehman Brothers, Inc.*, 298 S.C. 462, 381 S.E.2d 499 (Ct.App.1989). The Court of Appeals will not disturb a discretionary ruling on appeal unless it appears the ruling is without evidentiary support or controlled by some error of law. *Stanton v. Town of Pawley's Island*, 420 S.E.2d 502 (1992). The issue before the Court of Appeals, therefore, is whether the Trial Court's determination is supportable by the evidence and not controlled by an error of law. *Williams v. Vanvolkenburg*, 312 S.C. 373, 440 S.E.2d 408 (S.C. App. 1993)

The Trial Court's findings were amply supported by the record. (R. pp. 4-7). The Trial Court found Appellants' "litigation tracking error" explanation conclusory and unsupported. (R. p. 5). No affidavits or internal records were submitted. A delay of over 120 days from service, and thirty-six days after actual engagement of counsel, does not constitute diligence. (R. pp. 4-7). See *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 463 S.E.2d 636 (Ct. App. 1995); *Regions Bank v. Owens*, 402 S.C. 642, 741 S.E.2d 51 (Ct. App. 2013). The Trial Court, accordingly, acted within its discretion and properly denied Appellants' Motion to Set Aside Default. *Id. and See Williams v. Vanvolkenburg*, 312 S.C. 373, 440 S.E.2d 408 (S.C. App. 1993).

B. THE TRIAL COURT PROPERLY CONSIDERED AND APPLIED THE WHAM FACTORS

Assuming *arguendo,* good cause existed, which Respondent denies, the Trial Court properly considered the *Wham* factors and still found that Appellants were not entitled to relief. (R. pp. 4-7). *Wham v. Shearson Lehman Bros.*, 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989). The Trial Court expressly cited the *Wham* factors and determined that they weighed against relief due to Appellants being dilatory in filing their motion for relief thirty-six (36) days after being advised they were in default. *Id.* The Trial Court, accordingly, did not reflexively deny Appellants' Motion to Set Aside Default and, instead, acted within its discretion and properly denied same. *Williams v. Vanvolkenburg*, 312 S.C. 373, 440 S.E.2d 408 (S.C. App. 1993).

C. CONCLUSION

For the foregoing reasons, the Circuit Court properly Appellants' Motion to Set Aside Default.

II. THE TRIAL COURT PROPERLY AWARDED DAMAGES BASED ON THE COMPLAINT

By defaulting, a defendant forfeits his "right to answer or otherwise plead to the complaint." *Morgan's, Inc. v. Surinam Lumber Corp.*, 160 S.E.2d 191, 193, 251 S.C. 61, 66 (S.C. 1968). "[E]ntry of an order of default is an admission by the defaulting party of the well-pleaded allegations of the complaint[.]" *State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 489, 334 S.E.2d 528, 530 (Ct. App. 1985). In essence, the defaulting defendant has conceded liability. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (S.C. 1978), 882. However, a defaulting defendant does not concede the amount of liability. *Id*. Respondent's Complaint alleged valid causes of action for breach of contract, fraud, negligent misrepresentation, constructive fraud, and unfair trade practices. (R. pp. 22-29). The allegations were specific and further substantiated by evidence at the damages hearing. (R. pp. 22-29, R. p. 17).

At the September 5, 2024 hearing, Respondent presented detailed, sworn testimony

establishing each category of loss: (1) lost equity of $461,393, based on an appraisal of $801,000 against a foreclosure sale of $470,000; (2) moving and storage costs of $18,000; and (3) uncredited loan modification payments totaling $21,000. (R. pp. 292-294). These were supported by admitted exhibits, including Plaintiff's Exhibit 1 (Appraisal) and Defendants' Exhibits 1 and 2 (foreclosure orders), all received without objection. (R. pp. 313-314).

The trial court confirmed that all liability allegations were deemed admitted and limited the proceeding to damages only, rejecting defense attempts to relitigate liability. (R. pp. 315-317). Mr. Johnson clarified that Respondent sought no emotional distress damages, restricting recovery to economic losses. (R. pp. 306-307). The court also properly recognized that trebling under SCUTPA was discretionary, not automatic. (R. pp. 315-316).

A plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence. *Howard v. Holiday Inns*, 271 S.C. 238, 246 S.E.2d 880 (1978). In the matter at hand, the Trial Court's award of $500,393 was grounded in testimony and corroborated by documentary proof. (R. pp. 13-21). The evidence, therefore, met the preponderance threshold. *Howard v. Holiday Inns*, 271 S.C. 238, 246 S.E.2d 880 (1978).

III. RESPONDENT IS NOT PRECLUDED UNDER COLLATERAL ESTOPPEL, RES JUDICATA, OR JUDICIAL ESTOPPEL

By defaulting, a defendant forfeits his "right to answer or otherwise plead to the complaint." *Morgan's, Inc. v. Surinam Lumber Corp.*, 160 S.E.2d 191, 193, 251 S.C. 61, 66 (S.C. 1968). Appellants, accordingly, forfeited their right to raise defenses, including affirmative defenses under Rule 8, SCRCP, and Respondent cannot be precluded thereby. *Id*.

Assuming *arguendo*, Appellants can assert affirmative defenses, which Respondent denies, in order to assert collateral estoppel successfully, the party seeking issue preclusion must show that the issue was actually litigated and directly determined in the prior action and that the matter

or fact directly in issue was necessary to support the first judgment. *Beall v. Doe, 281 S.C. 363, 315 S.E.2d 186 (Ct.App.1984).* The foreclosure action decided the debt and right to sale—not Appellants' servicing misconduct. See *Pye v. Aycock*, 325 S.C. 426, 430, 479 S.E.2d 56, 58 (Ct. App. 1996). None of the allegations here were litigated in foreclosure.

Res judicata likewise fails, as the claims differ in both subject matter and time period. *See Catawba Indian Nation v. State*, 407 S.C. 526, 756 S.E.2d 900 (S.C. 2014) (*Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.*) Judicial estoppel does not apply because Respondent never took inconsistent positions or obtained prior advantage. *See, generally, Cothran v. Brown*, 592 S.E.2d 629, 357 S.C. 210 (S.C. 2004). The Trial Court's rejection of these defenses was, accordingly, correct.

IV. THE TRIAL COURT PROPERLY REJECTED APPELLANTS' UNCLEAN HANDS DEFENSE

By defaulting, a defendant forfeits his "right to answer or otherwise plead to the complaint." *Morgan's, Inc. v. Surinam Lumber Corp.*, 160 S.E.2d 191, 193, 251 S.C. 61, 66 (S.C. 1968). Appellants, accordingly, forfeited their right to raise defenses outside of contesting Respondent 's damages. *Id*.

Assuming *arguendo*, Appellants can assert an unclean hands defenses, which Respondent denies, the unclean hands doctrine bars relief only where inequitable conduct directly relates to the matter in dispute. *See Arnold v. City of Spartanburg*, 201 S.C. 523, 23 S.E.2d 735 (1943). Here, the alleged misconduct—Respondent's prior loan default—bears no relation to Appellants' deceptive servicing conduct giving rise to this action. The Trial Court properly found the defense inapplicable. *Id.*

V. THE DAMAGES AWARD WAS WITHIN THE COURT'S DISCRETION

In an action at law tried without a jury, the court's findings of fact will be upheld on appeal when the findings are reasonably supported by the evidence. *Butler Contracting, Inc., v. Court Street, LLC*, 369 S.C. 121 , 127, 631 S.E.2d 252 , 255 (2006). The court's findings of fact will not be disturbed on appeal unless wholly unsupported by the evidence or clearly influenced or controlled by an error of law. *Id.* at 127 , 631 S.E.2d at 255-56. *Hendricks v. Hicks*, 649 S.E.2d 151, 374 S.C. 616 (S.C. App. 2007).

The court heard live testimony, reviewed admitted exhibits, and articulated its findings in writing. (R. pp. 13-21). The transcript confirms that the judge reviewed the file, heard testimony and arguments, and took the matter under advisement after full consideration of all evidence and the Defendants' memorandum. (R. pp. 318-320). This record demonstrates thoughtful discretion, not reflexive decision-making.

Defense arguments that Respondent had "no equity" or "lived rent-free" were raised and rejected as irrelevant to the admitted liability and damage framework. (R. pp. 306-311). The trial court appropriately confined its analysis to the credible evidence of lost equity, storage, and payments. The resulting judgment was grounded in testimony and corroborated by documentary proof; easily meeting the preponderance of evidence threshold. *Howard v. Holiday Inns*, 271 S.C. 238, 246 S.E.2d 880 (1978).

VI. THE TRIAL COURT PROPERLY DENIED APPELLANTS' MOTION TO ALTER OR AMEND

Under Rule 59(f), SCRCP, a Rule 59(e) motion "may in the discretion of the court be determined on the briefs filed by the parties without oral argument." *Pollard v. County of Florence*, 314 S.C. 397, 444 S.E.2d 534 (S.C. App. 1994). Appellants' motion merely rehashed arguments previously rejected, providing no new evidence or law. (R. pp. 203-253). The Trial

Court's summary denial of Appellants' Rule 59(e) motion, therefore, was entirely appropriate.

VII. AFFIRMANCE ON ANY GROUND APPEARING IN RECORD.

Respondent expressly asks that the Court affirm the Circuit Court's Orders of October 21, 2024 and July 6, 2023 upon any grounds appearing in the Record on Appeal pursuant to Rule 220(c), SCACR.

CONCLUSION

For the foregoing reasons, Respondent Andrew E. Lewis respectfully asks this Court to affirm the Circuit Court's judgment against Appellants Lakeview Loan Servicing, LLC and Loan Care LLC.

Respectfully submitted,

/s/ Townes B. Johnson III

Townes B. Johnson III (SC Bar# 75412)
Christian H. Thorndike (SC Bar# 103697)
TOWNES B. JOHNSON III, LLC
PO BOX 9246
GREENVILLE, SC 29604
PH: (864) 757-4899
tjohnson@sc.legal

Attorney for Respondent

February 18, 2025
Greenville, South Carolina