

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Woody Moore)
)
) Plaintiffs)
)
 v.)
)
 Budget Motors, LLC and)
 John Doe Motor Dealer)
)
) Defendants.)
)

IN THE COURT OF COMMON PLEAS
 C/A NO: 2013-CP-42-3217

ORDER

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SC Court of Appeals

Initial Hearing Date: July 22, 2015
 Presiding Judge: The Hon. Gordon G. Cooper
 Plaintiff's Attorney: Andrew R. Hart
 Defendant's Attorney: John Strickland

This matter came before me pursuant to a Motion to Reconsider filed by Defendant Budget Motors, LLC on April 20, 2015. Attorney Andrew R. Hart of Alford & Hart, LLC appeared on behalf of the Plaintiff, and attorney John Strickland appeared of behalf of Defendant Budget Motors, LLC.

I. Background

This matter came before the Master in Equity of Spartanburg County pursuant to an Order of Reference dated November 21, 2014 from the Spartanburg County Court of Common Pleas. Initially, the matter was filed in the Court of Common Pleas on August 18, 2013. Plaintiff served the Defendant with service of process through its registered agent, Shane Davis, on September 4, 2013. Plaintiff did not receive a responsive answer or other pleading in response to the Complaint, and Plaintiff filed a Motion for Default on February 14, 2014. Plaintiff's Motion for Default Judgment was heard before the Hon. R. Keith Kelly on September 11, 2014 and default judgement was granted on September 11, 2014. A hearing to determine

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damages was held before Hon. Gordon G. Cooper in the Spartanburg Master in Equity on January 26, 2015. Shane Davis, representing himself as owner of Defendant Budget Motors, LLC, appeared on behalf of the business, however, no attorney appeared on behalf of Defendant Budget Motors.

On April 9, 2015, the Court awarded Plaintiff actual damages in the amount of \$5,000.00, representing the purchase price paid by the Plaintiff to the Defendant dealership for the subject vehicle. Pursuant to South Carolina Code §56-15-110, the Court ordered Plaintiff's actual damages to be doubled, and awarded reasonable attorney's fees. Plaintiff's counsel submitted an Affidavit of attorney's fees, and the court has determined a reasonable attorney's fee to be \$1,235.00, for a total judgment against Defendant Budget Motors in the amount of \$11,235.00. The court found that Defendant Budget Motors, LLC did not act maliciously, and therefore punitive damages were not awarded pursuant to SC Code §56-15-110.

Defendant Budget Motors, now represented by counsel John Strickland, filed a Motion to Reconsider on April 20, 2015, arguing that pursuant to R. 59(e) and R. 60(b)(1) and (3), SCRCRP, the judgment entered by the Court on April 9, 2015, should be reconsidered, or alternatively, seeking relief from the judgment for mistake, inadvertence, surprise or excusable neglect, and/or fraud, misrepresentation, or other misconduct of an adverse party. Counsel for Defendant argues that the court should reconsider the judgment in light of evidence not presented by Defendant Budget Motors at the hearing but now brought fourth, including, a buyer's guide purportedly bearing the signature of Plaintiff and testimony of Shane Davis, owner of Defendant Budget Motors, that he relied on a statement from an unidentified South Carolina Department of Motor Vehicles Department employee that he did not need to answer the Plaintiff's Complaint. Additionally, Defendant argues that they were unaware that they could not represent the business

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themselves in court. Finally, Defendants argue that testimony of Plaintiff at trial that he was not made aware of the salvage condition of the subject vehicle by Defendant Budget Motors constitutes fraud, misrepresentation or other misconduct of an adverse party. Defendant's motion is directed solely at the damages ordered by the Master in Equity on April 9, 2015, and not the default judgment granted by the Court of Common Pleas on September 11, 2015.

II. Standard of Review

Pursuant to R. 59(e), SCRCF, a party may file a motion to alter or amend a judgment not later than 10 days following receipt of the written notice of the entry of the order. Pursuant to R. 60(b)(1), a court may relieve a party from judgment upon showing of mistake, surprise, inadvertence, or excusable neglect. Pursuant to R. 60(b)(3), SCRCF, on motion and upon such terms as are just, the court may relieve a party or his legal representative from final judgment or order on the basis of fraud, misrepresentation, or other misconduct of an adverse party.

III. Analysis

Relief sought by the Defendant Budget Motors is denied, as Defendant Motors did not present the newly-cited evidence at trial, failed to take any action in defending the case and fails to show any fraud or misrepresentation on the part of the Plaintiff pursuant to R. 60(b)(3), SCRCF.

Issues which could have been presented to the court for consideration previously, which were not, are not the proper subject of Rule 59(e) relief, and the issues are waived.

Hickman v. Hickman, 392 S.E.2d 481, 301 S.C. 455 (S.C. App., 1990) citing *Johnson v. City of Richmond*, 102 F.R.D. 623, 623 (E.D.Va.1984). The new evidence presented by Defendant Budget Motors in its Motion to Reconsider, including a vehicle buyer's guide claimed by Defendant to bear the signature of Plaintiff and an Affidavit submitted at the hearing by Shane

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Davis, owner of Budget Motors, LLC, were not raised prior to either the default judgment or the damages order. Defendant Budget Motors failed to file any responsive pleading or response prior to the present motion, either through counsel or on its own behalf. Defendant had ample time and opportunity to file a response or contest the allegations, as service of the complaint occurred on September 4, 2013, Plaintiff's motion for default was filed on February 14, 2014, the hearing for damages before the Master in Equity took place on January 26, 2015, and the present motion was not filed until April 20, 2015. Since Defendant had the opportunity to raise the evidence prior to judgment in the matter and failed to do so, the issues are waived and are not a basis for relief pursuant to R. 59(e), SCRCP, and the motion is denied.

Defendant fails to show any basis for relief from the judgment pursuant to R. 60(b)(1), as it cannot exhibit the required mistake, surprise, inadvertence, or excusable neglect. A motion for relief pursuant to R. 60(b)(1), SCRCP is addressed to the sound discretion of the trial judge. *Tri-County Ice and Fuel v. Palmetto Ice*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1991). A party has a duty to monitor progress of his case, and a lack of familiarity with proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applicable to an attorney." *Goodson v. American Bankers Ins. Co.*, 295 S.C. 400, 402, 368 S.E.2d 688, 689 (S.C. Ct. App. 1988). Defendant's claims that owner Shane Davis did not know he could not represent the corporation in court do not meet the standard of mistake or excusable neglect. Neither Shane Davis or anyone else on behalf of Defendant Budget Motors filed any responsive pleading, motion, answer or other filing in response to Plaintiff's Complaint, despite nearly a year and a half passing between service on Shane Davis and the date of the damages hearing. Accordingly, Defendant fails to show the any mistake, surprise or excusable neglect upon which relief pursuant to R. 60(b)(1) can be granted, and the motion is denied.

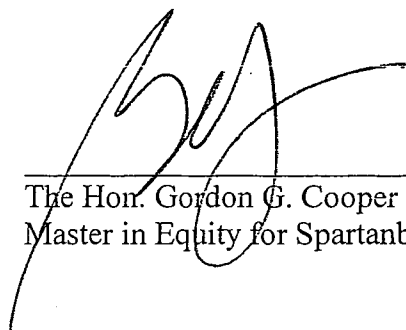
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Defendant fails to show any fraud, misrepresentation, or other misconduct by the Plaintiff pursuant to R. 60(b)(3) for relief from the judgment against Defendant. Defendant does not cite any evidence that Plaintiff misrepresented any fact of committed fraud in his testimony, or any other element of the Plaintiff's case that formed the basis of the judgment against the Defendant was misrepresented or fraudulent. Furthermore, the evidence cited by Defendant as the basis for the fraud and misrepresentation was readily available at the time of the hearing, and Defendant failed to take any steps to raise the evidence and arguments prior to judgment. Accordingly, Defendant fails to state any basis for relief from the present judgment, and Defendant's motion is denied.

IV. Conclusion

Defendant's motion to reconsider the judgment entered against it on April 9, 2015, or alternatively, to relieve the Defendant from the judgment, is denied.

August 4
~~October~~, 2015


The Hon. Gordon G. Cooper
Master in Equity for Spartanburg County

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