

5

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

RECEIVED

MAR 30 2017

SC Court of Appeals

The Honorable Jean H. Toal, Circuit Court Judge

Common Pleas Case No. 2016-CP-40-05896

Appellate Court Case No. 2017-000682

RICHLAND COUNTY
FILED
2017 MAR 30 AM 8:45
JEANNETTE W. MORRIS
C.C.P. & G.S.

GGG Partners, LLC as Receiver for Korn Law Firm, P.A.Respondent

v.

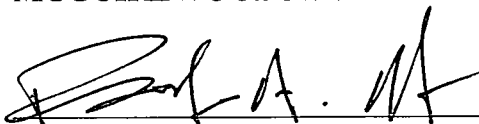
Nationstar Mortgage, LLCAppellant.

AMENDED NOTICE OF APPEAL

Defendant Nationstar Mortgage LLC (hereinafter "Appellant") appeals from the Order of the Honorable Jean H. Toal entered on February 17, 2017, that denied Appellant's Motion to Set Aside Entry of Default and Default Judgment and Appellant's Motion to Dismiss the Complaint of GGG Partners, LLC as receiver for Korn Law Firm, P.A. (hereinafter "Respondent"). A copy of said Order is attached hereto. Appellant received written notice of the entry of the Order on February 17, 2017 via electronic mail from the Richland County Court of Common Pleas.

Respectfully submitted, this 30th day of March, 2017.

MCGUIREWOODS LLP



Robert A. Muckenfuss
SC Bar #13903
201 North Tryon Street, Suite 3000
Charlotte, North Carolina 28202
Telephone: (704) 343-2000
Facsimile: (704) 343-2300
rmuckenfuss@mcguirewoods.com

Elizabeth M. Z. Timmermans
S.C. Bar No. 100288
434 Fayetteville Street, Suite 2600
Raleigh, North Carolina 27601
Telephone: (919) 755-6576
Facsimile: (919) 755-6699
eztimmermans@mcguirewoods.com

Attorneys for Appellant Nationstar Mortgage LLC

Other Counsel of Record:

Eric Hale, Esq.
Clarkson Law Firm, LLC
1300 Pickens Street
Columbia, SC 20901
Telephone: (803) 726-3558
Facsimile: (803) 726-3568
Eric.hale@clarksonlawllc.com

*Attorneys for Respondent GGG Partners, LLC
As Receiver for Korn Law Firm, P.A.*

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

RECEIVED

MAR 30 2017

SC Court of Appeals

The Honorable Jean H. Toal, Circuit Court Judge
Common Pleas Case No. 2016-CP-40-05896
Appellate Court Case No. 2017-000682

JEANNETTE MONROE
C.C.P. & P.S.
2017 MAR 30 AM 8:45

RICHLAND COUNTY
FILED

GGG Partners, LLC as Receiver for Korn Law Firm, P.A.Respondent,
v.
Nationstar Mortgage, LLCAppellant.

PROOF OF SERVICE

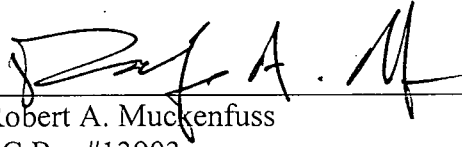
I hereby certify that I served the foregoing **AMENDED NOTICE OF APPEAL** by depositing a copy of it on the date shown below in the United States Mail, postage prepaid, on March 30, 2017, addressed as follows:

Eric Hale, Esq.
Clarkson Law Firm, LLC
1300 Pickens Street
Columbia, SC 20901
*Attorneys for Respondent GGG Partners, LLC
As Receiver for Korn Law Firm, P.A.*

This the 30th day of March, 2017.

[SIGNATURE ON NEXT PAGE]

MCGUIREWOODS LLP



Robert A. Muckenfuss
SC Bar #13903
201 North Tryon Street, Suite 3000
Charlotte, North Carolina 28202
Telephone: (704) 343-2000
Facsimile: (704) 343-2300
rmuckenfuss@mcguirewoods.com

Elizabeth M. Z. Timmermans
S.C. Bar No. 100288
434 Fayetteville Street, Suite 2600
Raleigh, North Carolina 27601
Telephone: (919) 755-6576
Facsimile: (919) 755-6699
eztimmermans@mcguirewoods.com

Attorneys for Appellant Nationstar Mortgage LLC

5

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4005896

RECEIVED

GGG Partners LLC

Nationstar Mortgage LLC

Korn Law Firm P A

PLAINTIFF(S)

DEFENDANT(S)

MAR 30 2017

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Plaintiff

SC Court of Appeals

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried, heard, and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

See attached Order Denying Defendants Motion to Set Aside Default Judgment & x

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled |
|---|---------------------------------------|--------------------------------|
| | | \$ |
| | | \$ |
| | | \$ |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge [Signature] Judge Code 2758 Date 2-16-17

For Clerk of Court Office Use Only

This judgment was entered on the 17 day of Feb, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this 17 day of Feb, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Stephen Elias Fain

Robert A. Muckenfuss

Elizabeth Marion Zwickert
Timmermans

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Clerk of Court

Entry of Default *Jeanette W. McBride*

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

GGG Partners, LLC as receiver for
Korn Law Firm, PA,

Plaintiff,

v.

Nationstar Mortgage, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS FOR
THE FIFTH JUDICIAL CIRCUIT

ORDER

C/A No.:2016-CP-40-05896

RECEIVED

MAR 30 2017

SC Court of Appeals

RICHLAND COUNTY
CLERK OF COURT
2017 FEB 17 PM 12:54

This matter came before this Court for a hearing on February 6, 2017 on Defendant's Motions to Set Aside Entry of Default and Default Judgment and Defendant's Motion to Dismiss Plaintiff's Complaint. Present at the hearing were Plaintiff's attorney, Eric C. Hale, and Defendant's Attorneys, Robert A. Muckenfuss and Elizabeth M.Z. Timmermans.

Plaintiff filed a complaint against Defendant on September 30, 2016, seeking to recover sums purportedly owed to the Korn Law Firm, P.A. for unpaid legal fees and costs. On December 14, 2016, the Clerk of Court entered default against Defendant. On December 28, 2016, the Court ordered that default judgment be entered against Defendant in the amount of \$152,430.11. This amount includes \$152,230.11 purportedly owed by Defendant for unpaid legal fees and costs, which Plaintiff alleges is evidenced by invoices that are available upon request. Defendant sought relief from the entry of default and default judgment through its Motions to Set Aside Entry of Default and Default Judgment.

After consideration of the parties' pleadings, affidavits, arguments, briefs and other documents contained in the record, and after considering the grounds advanced in the Defendant's Motions to Set Aside Entry of Default and Default Judgment, I find insufficient grounds to set aside the entry of default and default judgment and deny the same. Accordingly, the Defendant's Motion to Dismiss Plaintiff's Complaint is rendered moot and is likewise denied.

Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. However, Rule 55(c) permits a party to move to set aside the entry of default. The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRPC. This standard requires a party seeking relief from an entry of

#1
[Handwritten signature]

default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989). Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRPC. The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule 55(c). *Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct. App. 1987). Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or "other misconduct of an adverse party." Rule 60(b), SCRPC.

#2
JST

I conclude that Defendant's Motions are controlled by the ruling in *Sundown Operating Co., Inc. v. Intedge Indus., Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009). "The law is clear that an attorney or insurance company's misconduct is imputable to the client." *Id.* 383 S.C. 607-608, citing *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) (attorney's negligence in failing to answer is imputable to defendant); *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987) (recognizing that negligence of an attorney or insurance company is imputable to a defaulting litigant). The Defendant herein alleges the entry of default was attributable solely to a Nationstar intake employee's inadvertent failure to send the matter to in-house counsel. "[A] defendant may not be relieved from the entry of default solely because it relied to its detriment on a negligent [employee]." *Id.* (emphasis in original). Therefore, the Defendant has failed to make the threshold showing of good cause for the setting aside of the entry of default and an inquiry into the *Wham* factors is therefore unnecessary. Moreover, because the "good cause shown" standard under Rule 55 (c) SCRPC is a less stringent standard than the excusable neglect standard of Rule 60(b) SCRPC, the motion similarly fails as a matter of law under Rule 60(b) SCRPC. The court is further persuaded that this outcome is correct by the fact that counsel for the Plaintiff provided a courtesy copy of the Complaint to the "Vice President – Associate General Counsel" for Defendant on October 27, 2016.

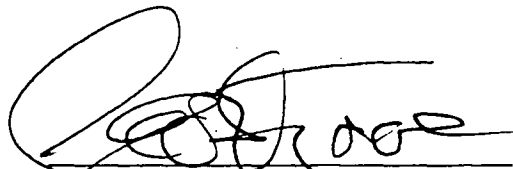
Defendant presents unpublished authority from the South Carolina Court of Appeals suggesting that in the context of a default obtained by an attorney against its client, the court should review the invoices in dispute to determine their reasonableness when ordering a judgment amount. *See Tillman v. Grant*, No. 2006-UP-340, 2006 WL 7286887 (S.C. Ct. App. Oct. 5, 2006) ("The courts examine agreements between attorneys and clients with the utmost care to avoid any improper advantage to the attorney. . . . Therefore, the court will not allow

attorneys to impose excessive charges on their clients because attorneys owe the public a duty of trust." (citations omitted)). In ruling on Defendant's Motions to Set Aside Entry of Default and Default Judgment, this court declines to review the invoices which Plaintiff alleges evidence the sums owed by Defendant for unpaid legal fees and costs. In so declining, the court determined on the record at the hearing on Defendant's Motions that the sums sought by Plaintiff for unpaid legal fees and costs seemed reasonable on the face of the Complaint.

Having concluded that the Defendant's Motion to Set Aside Entry of Default and Default Judgment should be denied, this court need not consider the Defendant's Motion to Dismiss Complaint as it is rendered moot.

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the Defendant's Motion to Set Aside Entry of Default and Default Judgment is **DENIED**. **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Defendant's Motion to Dismiss Complaint is **DENIED**.

AND IT IS SO ORDERED.



The Honorable Jean Hofer Toal

Columbia, South Carolina

February 16, 2017

3