

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
Andy Lee Rayburn,)
)
Plaintiff,)
)
vs.)
)
David Dynast,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-46-03212

ORDER

This matter came before the Court on February 28, 2017, upon Plaintiff's request for a default damages hearing. J. Richards McCrae represented the Plaintiff, and Caroline M. Gieser represented the Defendant. By consent of the parties, a motion by Defendant presented at the hearing to set aside Defendant's default pursuant to Rule 55, SCRPC, was also heard.¹ Based on the record presented, Plaintiff's evidence of damages, and the arguments of counsel for the parties, I make the following findings and conclusions.

FACTUAL/PROCEDURAL BACKGROUND

Plaintiff commenced this action on October 31, 2016, by filing the Summons and Complaint. Defendant was personally served with the Summons and Complaint on November 5, 2016, but has failed to file an answer, or otherwise respond to the pleadings. Plaintiff filed an Affidavit of Default and Motion for Default Judgment on December 13, 2016. Subsequently, on December 22, 2016, the Hon. Daniel D. Hall issued an Order granting Plaintiff's Motion for Default Judgment, and provided that damages were to be determined at a subsequent hearing.

Prior to the hearing on damages, Defendant's oral motion to set aside the default pursuant to Rule 55, SCRPC, was heard.

DISCUSSION/ANALYSIS

1. Rule 55 Motion.

Defendant's basis for the motion to set aside the order of default was that the Court lacked personal jurisdiction over Defendant. Defendant maintains that because the pleadings

¹ Defendant did not file a Motion to Set Aside the Default Judgment in this matter prior to the hearing conducted on February 28. However, with the consent of all parties, Defendant's motion was heard prior to Plaintiff's damages hearing.



identified the Defendant as "David Dynast", when in reality his name is "David Dysart", he has not been made a party to the action. He asserts that, therefore, he, "David Dysart", has never been properly served with the Summons and Complaint.

It is undisputed that David Dysart was duly served with the Summons and Complaint naming "David Dynast", as the party-defendant. It is likewise undisputed that David Dysart is the party that was involved in the motor vehicle collision with Plaintiff that is the subject of this action. The driver's license number for "David Dynast" on the accident report is in fact David Dysart's driver's license number.

Relief from entry of default under Rule 55(c) must be predicated upon "good cause." Rule 55(c), SCRPC. "This standard requires a party seeking relief from an entry of 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." *Sundown Operating Co., Inc. v. Intedje Industries, Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). Once that has been done, the trial court must also consider the timing of the motion, the existence of any meritorious defense, and the prejudice to the Plaintiff if relief from default is granted. *Id.* In this case, I find and conclude that Defendant has failed to provide a satisfactory explanation for the default. Thus, analysis beyond that finding is not required.

As noted above, Defendant asserts that the Court lacks personal jurisdiction over David Dysart because his name was misspelled in the Summons and Complaint.

The purpose of Rule 5, SCRPC, is to provide a defendant with notice of the action so as to afford him the opportunity to respond to the lawsuit in the appropriate manner. "To establish that service has been properly effected, the plaintiff need only show compliance with the civil rule on service of process." *McCall v. IKON*, 363 S.C. 646, 652, 611 S.E.2d 315, 317 (Ct. App. 2005). "When these rules are followed, there is a presumption of proper service." *Id.*

The primary issue presented by Defendant's motion is whether the misnomer of Defendant in the caption of the case defeats the Court's personal jurisdiction over Defendant, and whether this error entitles him to relief from the December 22, 2016, Order, adjudging him to be default. Our Supreme Court first addressed this issue in 1885, and stated:

The weight of authority, . . . is that this makes no difference, and if the writ is served on the party intended to be served, and he fails to appear and plead in abatement, and suffers judgment to be obtained by default, he is concluded, and in all future litigation

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may be connected with the suit or judgment by proper averments. (*Waldrop v. Leonard*, 22 S.C. 118, 127 (1885).)

Following *Waldrop*, the Court more recently held:

. . . where a defendant sued by a wrong name omits to plead in abatement and suffers the plaintiff to proceed to judgment, though he has never appeared to the wrong name, this Court will not interfere to set aside the proceedings." (*Tri-County Ice and Fuel Company v. Palmetto Ice Company*, 303 S.C. 237, 241, 399 S.E.2d 779, 782 (1990).)

In this case, David Dysart was duly served with the Summons and Complaint in full compliance with Rule 5, SCRCP. The pleading adequately described a specific motor vehicle collision, and Mr. Dysart knew he was a party to that collision. Seeing that the pleadings incorrectly named him as "David Dynast",² Mr. Dysart had every opportunity thereafter either to file a responsive pleading objecting to the misnomer, or to bring a motion to dismiss the action pursuant to Rule 12(b)(2), SCRCP. Instead, he did nothing until after Plaintiff had already obtained an order from the Court holding him in default.

Our Supreme Court has stated:

We have never required exacting compliance with the rules to effect service of process. (Citations omitted.) Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings. (*Roche v. Young Bros. Inc.*, 318 S.C. 207, 209-10, 456 S.E.2d 897, 899 (1995).)

As the Court of Appeals has noted:

A suit at law is not a children's game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring parties into court. If it names them in such terms that every intelligent person understands who is meant, as is the case here, it has fulfilled its purpose; and courts should not put themselves in the position of failing to recognize what is apparent to everyone else. (*McCall v. IKON*, 363 S.C. 646, 652, 611 S.E.2d 315, 317 (Ct. App. 2005). Internal citations omitted.)

Accordingly, I find and conclude that Defendant has failed to demonstrate that the

² The apparent source of the confusion was the fact that the accident report pertaining to the collision, and prepared by the investigating/responding law enforcement officer, incorrectly rendered Mr. Dysart's last name as "Dynast." This error was perpetuated by the misnomer of Mr. Dysart in the Complaint.

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previous Order of Default should be set aside for good cause and, as such, Defendant's motion must be denied.

2. Plaintiff's damages.

With respect to damages, I find and conclude that Plaintiff has proved the following by a preponderance of the evidence.

Plaintiff injured his neck, back and right ankle as a result of the motor vehicle collision that occurred on April 14, 2016. He incurred a combined total of \$10,057.69 in medical and chiropractic costs due to the injuries suffered in this collision.

At the time of this incident, Plaintiff was employed with Comporium Communications where he earned \$19.17 an hour. He was unable to work for eight days following this incident, missing a total of sixty-four hours. Using these factors to calculate a total, Plaintiff suffered lost wages in the amount of \$1,226.88.

Plaintiff had moderate-to-severe pain in his affected body-parts for approximately one-and-a-half months following the collision, and his pain and discomfort did not fully resolve until sometime in August, 2016. This coincided with the conclusion of his medical and chiropractic treatment. Plaintiff was unable to play football with his young son or go fishing for several months after this accident, activities which he regularly pursued and enjoyed.

Plaintiff acknowledged that he had previously injured his neck, back and ankle in an earlier motor vehicle collision in 2014, and had sought chiropractic care following that incident. However, immediately prior to the subject accident, he was not experiencing pain of any kind in any of these areas of his body.

Defendant did not dispute Plaintiff's claims with regard to his lost wages. Nor was there any evidence that Plaintiff's medical and chiropractic treatment was either unreasonable, or unnecessary, aside from pointing out that Plaintiff had suffered similar injuries two years earlier.

Based on the evidence and testimony presented at the hearing, I find and conclude that Plaintiff is entitled to an award of actual damages in the amount of \$25,000.00.

ORDER

Therefore, based on the record presented, and the findings and conclusions herein, it is ordered as follows:

1. Defendant's motion to set aside default judgment pursuant to Rule 55, SCRCP, is denied.

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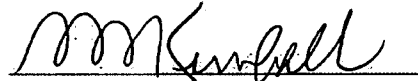
2. Plaintiff is granted judgment against the Defendant, David Dysart, in the sum of \$25,000.00, actual damages, together with the costs of this action.

3. The caption of this case shall be amended to reflect the name of the Defendant as "David Dysart", and the appropriate records of the Court shall be amended to reflect the amendment.

4. The Clerk of Court is authorized and directed to enter the judgment in this case upon the judgment roll against the Defendant in name of "David Dysart."

AND IT IS SO ORDERED.

March 7, 2017


S. Jackson Kimball
Special Circuit Court Judge
York County

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FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2016CP4603212

Andy Lee Rayburn		David Dysart	
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PLAINTIFF(S)	DEFENDANT(S)
Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Self-Represented Litigant

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 or heard and a decision rendered. See Page 2 for additional information.
- 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: _____
- STAYED DUE TO BANKRUPTCY**
- 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:

This matter came before me on May 18, 2017, upon Defendant's motion pursuant to Rule 59(e), SCRPC, asking the Court to alter or amend the Court's Order filed March 8, 2017. Representing the parties were: J. Richards McCrae for Plaintiff; and, Carrie H. O'Brien for Defendant.

The purpose of Rule 59(e), SCRPC, to alter or amend the judgment, is to request the trial judge to "... reconsider matters properly encompassed in a decision on the merits." *Arnold v. State*, 309 S.C. 157, 172, 420 S.E.2d 834, 842 (1992) (Citations omitted). A party cannot use a motion to reconsider, alter or amend a judgment to present an issue that could have been raised prior to the judgment, but was not. See *Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567 (2009); and, *Poch v. Bayshore Concrete Products/South Carolina, Inc.*, 386 S.C. 13, 686 S.E.2d 689 (Ct. App. 2009).

Upon reviewing the record presented, and considering the memoranda and arguments of counsel, I find no matter presented that was not addressed expressly or by clear implication in the prior order. I further find no basis for reconsideration or amendment of the ruling rendered in the prior order.

Therefore, it is ordered that Plaintiff's/Defendant's Motion pursuant to Rule 59(e), SCRPC, be denied.

AND IT IS SO ORDERED.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk: _____

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.

