

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
QBS Inc. of FL,)
)
)
Plaintiff,)
)
vs.)
)
Cypress Creek Assisted Living, LLC,)
Manatee River Assisted Living, LLC,)
The Home Alternative of Tampa Bay, Inc.,)
and Home Alternative of Tampa Bay Home)
Health Agency, LLC,)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

C. A. NO. 2016-CP-23-03323

ORDER

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JUL 10 2017

SC Court of Appeals

THIS MATTER came before me on May 23, 2017 on the defendants', Cypress Creek Assisted Living, LLC, Manatee River Assisted Living, LLC, and Home Alternative of Tampa Bay Home Health Agency, LLC ("Moving Defendants"), motion to be relieved from default judgment. Present at the hearing on behalf of the plaintiff, QBS Inc. of FL, was Adam C. Bach of the law firm Eller Tonnsen Bach, LLC. Present at the hearing on behalf of the Moving Defendants was Lee Plumblee of the law firm Eppes & Plumblee.

Default was entered against the Moving Defendants on February 22, 2017. On April 7, 2017, the Moving Defendants filed the present motion seeking to be relieved from default. Subsequently, on April 13, 2017, this Court entered default judgment against the Moving Defendants in the amount of \$13,873.35.

The Moving Defendants argue that their motion for relief from default should be considered under Rule 55 because their motion was filed prior to entry of the default judgment.

Alternatively, they argued that they are entitled to relief from default judgment pursuant to Rule 60(b) because the default judgment was entered against them due to their excusable neglect.

The Court finds that under either standard, the Moving Defendants are not entitled to relief from default judgment. The record shows that the plaintiff served the summons and complaint on the Moving Defendants on or about June 14, 2016. On July 14, 2016, the plaintiff granted a 30-day extension of time for the Moving Defendants to answer or otherwise respond to the plaintiff's complaint. This extension was confirmed by letter in accordance with Rule 6, SCRPC. A second request for extension was sought and granted by electronic mail on August 14, 2016, extending the answer deadline to September 14, 2016.

The Moving Defendants did not file an answer or response on or before September 14, 2016. On September 30, 2016, counsel for the plaintiff contacted defendants' Florida counsel by electronic mail - with a copy to James Biggins, the majority member of the defendant companies - stating that the plaintiff still had not received an answer or response to its complaint and that an answer must be received within twenty-one days. The defendants' Florida counsel responded by stating that twenty-one days would be "ample time."

Thereafter, no response or answer was received by the plaintiff, and the plaintiff moved for entry of default on January 10, 2017.

According to the Moving Defendants, they failed to file an answer because they believed they had an extension so long as the parties were negotiating and assumed that lack of communication with the plaintiff meant that the plaintiff had abandoned its case. As explained by our Supreme Court, failure to file a timely answer or response to a complaint because of confusion over whether an extension has been granted is not excusable neglect. See Gillespie v. Rowe, 275 S.C. 98 (1980). Similarly, good cause to set aside entry of default does not exist here because the

the plaintiff's counsel's September 30, 2016 email clearly stated an answer must be received within twenty-one days. The Moving Defendants assumption that they had an unlimited time to answer was unfounded and does not constitute good cause or excusable neglect.

The Moving Defendants also argue that default judgment should be set aside because this Court lacks personal jurisdiction over the defendants. Leaving aside whether this issue was waived by failing to raise it prior to default, the South Carolina long-arm statute, S.C. Code § 36-2-803, provides that jurisdiction exists over a person who enters "into a contract to be performed in whole or in part by either party in this State." The contract identifies the plaintiff's principal place of business as situated in Greenville County, South Carolina, provides that notices to the plaintiff shall be made to its office in Greenville County, South Carolina, and the contract is governed by South Carolina law. Further, the plaintiff's annual filings with the Florida Secretary of State shows that the plaintiff identified Greenville County, South Carolina as its principal place of business. These filings date to before the contract between the plaintiff and Moving Defendants. in all of its annual corporate filings dating to before entry into the contract. Additionally, the plaintiff represents that all services it provided to the Moving Defendants were provided from its principal office in Greenville County. It is clear that the Moving Defendants had notice that they were contracting with a South Carolina company for services to be performed in South Carolina. Therefore, this Court has personal jurisdiction over the defendants.

Because the plaintiff has failed to show good cause or excusable neglect, the Court will not address the arguments concerning a meritorious defense.

THEREFORE, IT IS ORDERED, that the moving defendants' motion to be relieved from default judgment is denied.



Greenville Common Pleas

Case Caption: QBS Inc.Of FL vs. Cypress Creek Assisted Living LLC, defendant, et al
Case Number: 2016CP2303323
Type: Order/Other

IT IS SO ORDERED

s/ The Honorable William H. Seals Jr. #2157

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