

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Isaac Noyes Smith V,)

Plaintiff,)

vs.)

Stuart Lewis Smith,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2016-CP-26-6640

ORDER

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OCT 10 2017

SC Court of Appeals

This matter came before the Court on Defendant's motion for default judgment against the Plaintiff. A hearing was held before me at 1:00 p.m. on June 19, 2017, in the Horry County Government and Justice Center in Conway, South Carolina. Present at that time were both parties and William A. Bryan, the attorney for the Defendant. The Plaintiff is pro se.

The Court finds that on February 16, 2017, the Defendant served her answer, counterclaim and set off on the Plaintiff. The Plaintiff has filed no reply to the counterclaim. The Defendant supported her motion with an affidavit for default judgment, as well as an affidavit of non-military service as to the Plaintiff.

The motion and supporting affidavit are consistent with the prayer of relief set forth in the Defendant's counterclaim against the Plaintiff. That is, the Defendant alleged in her counterclaim that she was entitled to a judgment of \$650,000 against the Plaintiff, plus interest at the legal rate from June 30, 2006. In the Defendant's affidavit for default judgment accompanying the motion for default judgment, interest is calculated at the legal rate of 8 ¾% per annum to be \$617,833.90 to May 11, 2017, with per diem interest accruing thereafter of \$155.82. The affidavit further states that the total due as of May 11, 2017, is \$1,267,833.90, plus \$155.82 interest per day thereafter.

At the hearing, the Plaintiff asserted that an affidavit he had previously filed with the Court on February 1, 2017, should be treated as a Reply to the Defendant's counterclaim. That affidavit was provided by the Plaintiff at a hearing on the Defendant's motion to quash the Plaintiff's lis pendens. The Defendant however had not yet served nor filed her answer and counterclaim when the Plaintiff provided the affidavit in opposition to the Defendant's motion to quash the Plaintiff's lis pendens. The affidavit does not constitute a reply responsive to Defendant's counterclaim. Neither has Plaintiff filed any document with the Clerk of Court which he has identified as a reply to the Defendant's counterclaim. No extension was requested nor granted for the Plaintiff to reply to the Defendant's counterclaim.

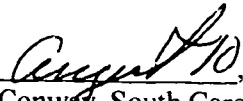
The Court finds that the Plaintiff failed to timely reply to the Defendant's counterclaim. The Court further finds that the Plaintiff should have served a reply to the counterclaim by no later than March 24, 2017. Counsel for the Defendant filed an affidavit of default with the Clerk of Court on April 4, 2017, and served the Plaintiff with a copy of the affidavit of default on April 5, 2017. Although it does not appear that the Clerk of Court entered default..."whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by affidavit..." Thynes v. Lloyd, 294 S.C. 152, 153, 363 S.E. 2d 122, 123 (Ct. App. 1987)

The Court finds that no good cause has been shown by the Plaintiff to set aside default as required by Rule 55(c) SCRPC. Other than suggesting that the affidavit submitted to the Court on February 1, 2017, in opposition to the Defendant's motion to quash the Plaintiff's lis pendens could serve as a Reply, the Plaintiff has offered no reason for failing to reply to the Defendant's counterclaim.

The Court finds that the Defendant is entitled to judgment by default for amount prayed for in her counterclaim and as established by her affidavit of default attached to the motion for default judgment.

IT IS THEREFORE ORDERED that the Defendant Stuart Lewis Smith have judgment against Isaac Noyes Smith, V, in the amount of \$650,000, plus interest from June 30, 2006, at the legal rate of 8 $\frac{3}{4}$ % per annum in the amount of \$623,910.88 as of June 19, 2017, for a total judgment of \$1,273,910.80, plus \$150.82 interest per day from June 19, 2017, until entry of judgment by the Clerk of Court.

AND IT IS SO ORDERED.


August 10, 2017
Conway, South Carolina


Paul M. Burch, Presiding Judge
Fifteenth Judicial Circuit