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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM LEE COUNTY

The Honorable Clifton Newman
Circuit Court Judge

CASE NUMBER: 2013-CP-31-0321

APPELLANT NUMBER: 2016-001989

Laura Toney.....**Appellant,**

Vs.

LaSalle Bank National Association
As Trustee for the Registered Holders
Of Structured Asset Securities
Corporation, Structured Asset Investment
Loan Trust, Mortgaged Pass-Through
Certificates, Series 2004-11, AltiSource
Homes, Wayne Capell, Lee County
Treasure and Lee County Planning and
Zoning.....**Respondents.**

MOTION TO FILE RELEVANT DOCUMENTS

Pursuant to Rule 240, the Appellant, Laura Toney, respectfully requests permission from the Court to file documents that the Appellant feels is relevant to the case. The Appellant received correspondence from the Respondent stating that if certain documents are filed, they will file a Motion to have the documents thrown out. The Appellant feels that the documents are relevant to prove her case because of the following:

1. Mr. Paul Fata was cautioned by the Office of Lawyer Conduct for Conflict of Interest in this case. Mr. Paul Fata has represented the Appellant in numerous cases. The Appellant submitted verification of the representation to the Office of Disciplinary Counsel and the complaint was not dismissed. Mr. Fata was given a Letter of Caution. After this Letter of Caution was given to Mr. Fata, he continued to represent the Defendants. Mr. Fata totally disregarded the Letter of Caution. The Appellant feels that the copy of the Letter of Caution should be a part of the Record on Appeal which will prove Mr. Fata's total disregard for the Rules of Professional Conduct.
2. The case Sundown is another document the Respondent feels is irrelevant. The Appellant will prove in her Initial Brief that Sundown is relevant because the Respondents did not file a timely State or Federal Response in this case:

"In Sundown, the Petitioner contends that it has shown good cause under the minimal standard required by Rule 55(c), SCRCP, and that the trial court and the court of appeals erred in applying a heightened standard to conclude that the company was not entitled to set aside the entry of default. Although we have some concerns about the

lower courts' conflation of the Rule 60(b) and Rule 55(c) standards, we do not believe Petitioner meets even the most minimal showing of good cause, and is therefore not entitled to relief from the entry of default.

Differentiating the Standards for Relief Under Rule 55(c) and Rule 60(b)

We must acknowledge at the outset that there has been some recent confusion in the case law regarding the application of the standards for relief set forth in Rule 55(c) and Rule 60(b). We take this opportunity to reassert the basic legal premise that the standard for granting relief under Rule 60(b) is more rigorous than under Rule 55(c), and that an entry of default may be set aside for reasons that would be insufficient to relieve a party from a default judgment.

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), SCRCP. 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. 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). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding

of the lack of good cause. Dixon v. Besco Engineering, Inc., 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995). A motion under Rule 55(c) is addressed to the sound discretion of the trial court. Williams v. Stalnaker, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct.App.1994).

"Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP. 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), SCRCP. The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default."

"It is often observed, as the court of appeals held in the present case, that the criteria for obtaining relief from judgment under Rule 60(b)-mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation-are relevant in determining whether good cause has been shown under Rule 55(c), SCRCP. See New Hampshire Ins. Co. v. Bey Corp., 312 S.C. 47, 50, 435 S.E.2d 377, 378-79 (Ct.App.1993) (holding that, "as a practical matter," the 60(b) factors are relevant under both rules). However, we caution that this language invites trial courts to apply a heightened standard to Rule 55(c) motions. The Rule 60(b) factors are indeed relevant to a Rule 55(c) analysis, but only insomuch as proof of any one of these factors

is sufficient to show "good cause." No trial court should ever find good cause lacking based solely on the absence of a Rule 60(b) factor.

The Merits of Petitioner's Appeal

"Petitioner argues that the trial judge should have set aside the entry of default because the company showed "good cause" by asserting its insurance agent was negligent for failing to answer the complaint and because (1) it promptly moved for relief; (2) it has a meritorious defense; and (3) Respondents would suffer no prejudice if the court set aside the entry of default. We disagree."

"Initially, we reject Petitioner's argument that it should be granted relief from the entry of default because it should not be held responsible for the negligence of its insurance agent in failing to answer the complaint. This argument is without merit, as the law is clear that an attorney or insurance company's misconduct is imputable to the client. See Williams v. Vanvolkenburg, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct.App.1994) (observing that an attorney's negligence in failing to answer is imputable to the 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). Although the presence of other factors, in the totality of the circumstances, may amount to a showing of "good cause," a defendant may not be relieved from the entry of default solely because it relied to its detriment on a negligent insurance agent. See Ricks, 293 S.C. 372, 360 S.E.2d 535 (holding that good cause was shown in the totality of circumstances involving misplaced reliance on insurance agent)."

"In this case, Petitioner shares the responsibility for the entry of default with its insurance agent. Petitioner did not forward the summons and complaint to the insurance agent until approximately two weeks after initially notifying the agent of the lawsuit and several days after the time to answer expired. Furthermore, Petitioner's "good cause" argument is based entirely upon the September 4, 2001 service date. Petitioner has put forth no explanation with regard to the fate of the summons and complaint served on Randy Adams on August 28, 2001. As the court of appeals correctly held, this service was proper pursuant to Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 456 S.E.2d 897 (1995).[2] Even if we were to assume that Petitioner showed good cause as to why the summons and complaint that arrived in Rocky Mount was not answered in a timely manner, we must nevertheless affirm the entry of default because Petitioner has failed to show good cause as to why the summons and complaint that arrived in Myrtle Beach went unanswered.

The case was remanded back to State Court. The action was moved to Federal Court by the Respondents on the 30th day. The Respondents did not file an answer in State Court. The Respondents also was late filing an answer in Federal Court. The action was remanded back to State Court. The Respondents filed an answer after a default judgement was filed which over 100 days late. In Limehouse the Court states:

a. Timeliness of the Answer

In order to find the August 29 answer was timely Husley urges this court to adopt a rule that the thirty-day time period in which to answer starts over upon remand.[11] We are not inclined to adopt such a rule.

> Rule 12(a), SCRCP, provides: "A defendant shall serve his answer within 30 days after the service of the complaint upon him[] . . . ." However, federal rules provide "[a] defendant who did not answer [in state court] before removal must answer . . . within the longest of . . . :" (A) twenty days after being served or otherwise receiving the initial pleading or (B) within five days after notice of removal is filed. Rule 81(c)(2), FRCP.

"In this case, Hulsey removed fourteen days after being served. Thus, although under Rule 12(a), SCRCP, he was entitled to another sixteen days to answer, by choosing to remove the case to federal court, he willfully subjected himself to the shortened time period of Rule 81(c)(2), FRCP – providing he must answer within six days (twenty days after being served). However, in the seventy-six days between removal and the entry of remand, Husley neglected to answer."

"Initially, we find no authority in this state to support the position that a removing party is entitled to a fresh thirty days to answer a complaint upon remand. Neither did the trial court. Rather, looking at both the federal rules and state rules, in the exceptionally rare circumstance in which a case would be remanded to the state court before an answer was due pursuant to Federal Rule 81(c)(2), a plain reading of South Carolina Rule 12(a) would require an answer within thirty days of service. However, seemingly giving Hulsey the benefit of the doubt, the trial court determined that because the state court is

to proceed as if no removal had been attempted, removal to federal court tolls the thirty day time period and therefore, upon remand Hulsey should be allowed the remainder of any unexpired time.[12] See State v. Columbia Ry., Gas & Elec., 112 S.C. 528, 537, 100 S.E. 355, 357 (1919) (stating that upon remand it is the duty of the state court to proceed as if no removal had been attempted)."

"In this case, because Hulsey failed to answer under the plain reading of either Rule 12(a), SCRCP, or Rule 81(c)(2), FRCP; or under the more liberal approach provided by the trial court, it is of no consequence which approach we would adopt. Therefore, we are not occasioned to opine on the more acceptable method.[13] It suffices that we find no indication that a party is entitled to a fresh thirty-day period upon remand. Accordingly, we are disinclined to adopt a rule allowing the same. Such action is not the province of this court, but that of our legislature or supreme court."

For the above reasons, the Appellant is requesting that she be allowed to put the above documents in the Record on Appeal.

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Enclosures: Letter from the Commission on Lawyer Conduct
Letter from Mr. O'Connor

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Certificates, Series 2004-11, AltiSource
Homes, Wayne Capell, Lee CountY
Treasure and Lee County Planning and
Zoning.....**Respondents.**

CERTIFICATE OF MAILING

The Appellant Laura Toney certifies that she mailed a copy of the Motion to File Relevant Documents on November 3, 2017, via United States Postal Service to the Respondents addressed as follows:

Finkel Law Firm, LLC
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November 3, 2017

P.O. Box 722

Bishopville, SC 29010

South Carolina Court of Appeals

P.O. Box 11629

Columbia, SC 29211

Dear Sir or Madam:

Enclosed please find $25.00 filing fee and the Motion to File Relevant Documents. Also, please find (1) original and (6) copies.

Thank you for your attention in this matter.

Sincerely,

Laura Toney

Laura Toney

CC: Finkel Law Firm

Stuckey, Fata, Segars

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