

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Assitive Technology Medical)
 Medical Equipment Services, LLC,)
)
 Plaintiff,)
)
 v.)
)
 Phillip DeClemente,)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 NINTH JUDICIAL CIRCUIT
 Case No.: 2011-CP-10-08011

**ORDER DENYING DEFENDANT
 MOTION TO AMEND JUDGMENT**

FILED
 2018 MAR 26 PM 3:04
 CLERK OF COURT

Presiding Judge: Hon. Deadra L. Jefferson
 Counsel for Plaintiff: James E. Smith, Esq.
 Counsel for Defendant: Cameron L. Marshall, Esq.
 Date of Hearing: November 1, 2016
 January 5, 2017
 Court Reporter: Joyce Rueger

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 SC Court of Appeals

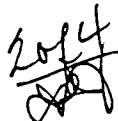
THIS MATTER is before the Court on Defendant Phillip DeClemente's Motion to Amend Judgment and be Relieved from Judgment pursuant to Rules 59 and 60 of the South Carolina Rules of Civil Procedure. This case initially came before the Court on November 1, 2016 and January 5, 2017, respectively, for a hearing on Plaintiff's Motion to Set Damages as to Defendant Phillip DeClemente. On December 21, 2017, the Court issued an Order of Judgment in favor of Plaintiff. Defendant was ordered to pay Eight Hundred Seventy-Five Thousand One Hundred Forty-Four and 00/100 (\$875,144.00) dollars in actual damages. Defendant filed the instant Motion to Amend Judgment and be Relieved from Judgment on January 8, 2018.¹ Plaintiff filed a Response in

¹ The Order of Judgment was mailed to the parties on December 28, 2017 and received by Defendant on January 2, 2017. Defendant's Motion to Amend Judgment was thus timely filed and served upon Plaintiff. See Rule 59, SCRPC ("A motion to alter or amend the judgment shall be served no later than 10 days after receipt of written notice of the order.").

opposition to Defendant's Motion to Amend on January 22, 2018. Having considered the Defendant's Motion to Amend as well as the various interests balanced by the Court at the time of the ruling, the Defendant's Motion to Amend is hereby denied in accordance with Rules 59 and 60 of the South Carolina Rules of Civil Procedure.

Rule 59(e) of the South Carolina Rules of Civil Procedure states that "(a) motion to alter or amend the judgment shall be served not later than 10 days after receipt of written notice of entry of the order." Rule 59(e), SCRPC. The purpose of Rule 59(e), SCRPC, to alter or amend the judgment is to allow the parties liberal opportunity to move for the trial judge to reconsider matters properly encompassed in a decision on the merits, regardless of whether the issues and arguments have been previously presented. "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it. A party *must* file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis in original). "A party cannot use a motion to reconsider to present an issue he could have raised prior to judgment but did not." Anderson Memorial Hosp., Inc. v. Hagen, 313 S.C. 497, 498, 443 S.E. 2d 399, 400 (Ct. App. 1994) (citing C.A.H. v. L.H., 315 S.C. 389, 434 S.E. 2d 268 (1993)). See Arnold v. State, 309 S.C. 157, 172-73, 420 S.E.2d 834, 842 (1992).

Defendant asks the Court to amend its Order of Judgment under Rule 59, SCRPC on the basis that the judgment entered against him was previously satisfied by a Full and Final Release executed between the parties on July 10, 2009. However, the Defendant has not presented any novel facts, arguments, or theories in support of this request. Nor has Defendant highlighted any portion of the record that this Court may have misunderstood, failed to fully consider, or failed to



rule on. To the contrary, the Court has considered and ruled upon this very argument by Defendant on multiple occasions. Indeed, the Defendant has contested the default posture of this case since his initial filing on August 10, 2012 wherein he attached the Full and Final Release in support of his defense. Judge Nicholson considered the arguments as to default, including the Full and Final Release, and nevertheless entered default judgment against Defendant on April 24, 2014.² The Defendant has since continued to argue against default judgment at every hearing before the Court. The instant Motion to Amend Judgment is merely the latest effort by Defendant to have the entry of default against him vacated. In response, this Court once again reiterates that it does not have the jurisdiction to overturn the default decision rendered by Judge Nicholson on April 24, 2014. See, e.g., Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 340 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another."). Defendant is therefore not eligible for relief from judgment under Rule 59, SCRPC.

Alternatively, the Defendant asks the Court to relieve him from its Order of Judgment pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure. Rule 60(b) allows the Court to relieve a party from a final judgment, order, or proceeding on the basis of mistake, inadvertence, surprise, or excusable neglect and/or fraud, misrepresentation or other misconduct of an adverse party. Rule 60(b) also provides for relief when the judgment had been satisfied or is void. Defendant argues that Rule 60(b) is applicable to his case because the Order of Judgment was

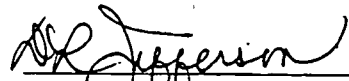
² Defendant DeClemente filed a Motion for Reconsideration of Judge Nicholson's April 24, 2014 Order. Defendant's Motion for Reconsideration was denied by Order dated May 3, 2014. Defendant DeClemente then filed an appeal with the Court of Appeals to challenge Judge Nicholson's May 30, 2014 ruling. The South Carolina Court of Appeals denied Defendant DeClemente's appeal by written order dated November 13, 2014 on the basis that Judge Nicholson's order is not immediately appealable because the "circuit court has not yet made an award of damages." The Remittitur was issued on November 13, 2014.



rendered as a result of mistake, inadvertence, fraud, and/or excusable neglect. However, Defendant made these very same arguments under Rule 60(b) before Judge Nicholson at a December 16, 2012 hearing and in corresponding motions and briefs. Judge Nicholson issued a ruling April 24, 2014 whereby he expressly rejected these arguments and held Defendant in default for failing to timely answer the Complaint. The present Motion to Amend is another attempt by Defendant to rehash the same arguments previously considered and ruled upon by Judge Nicholson. As aforementioned, this Court lacks the authority to reverse or modify Judge Nicholson's findings. See State ex. Rel. Medlock v. Love Shop, LTD, 286 S.C. 486, 334 S.E.2d 528, 529 (Ct. App. 1985). Defendant thus cannot obtain relief under South Carolina Rule of Civil Procedure 60(b) either.

For the foregoing reasons, the Court hereby denies Defendant's Motion to Amend Judgment and be Relieved from Judgment.

IT IS SO ORDERED.



Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

January 25, 2018
Charleston, South Carolina

fact
DAJ