

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) NINTH JUDICIAL CIRCUIT  
COUNTY OF CHARLESTON ) CASE NO.: 2017-CP-10-01603

Lashonda Middleton, )  
 )  
 ) Plaintiff, )  
 )  
 ) v. )  
 )  
 ) TBONZ Management, Inc., )  
 )  
 ) Defendant. )  
 )  
 )

ORDER  
**RECEIVED**  
APR 23 2018  
SC Court of Appeals

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JULIE ABNEY-RODRIGUEZ  
CLERK OF COURT  
BY \_\_\_\_\_

Procedural History

This matter came before the Court on Defendant T-Bonz Management, Inc.'s ("Defendant"), motion to set aside entry of default and order of default. This case arises out of a fall that occurred on Defendant's premises on August 4, 2015.

This action was commenced on March 30, 2017 by the filing of a summons and complaint. Plaintiff amended her complaint on May 1, 2017 to include the name of Defendant's restaurant, Liberty Tap Room and Grill, in her allegations. Defendant's registered agent, Lester Schwartz, Esq. ("Schwartz"), accepted service of the amended summons and complaint on May 11, 2017. Schwartz is an attorney licensed to practice in the state of South Carolina since 1986.

Defendant failed to answer the complaint. On June 13, 2017, the Honorable Deadra L. Jefferson ordered, adjudged, and decreed that Defendant was in default and ordered that a damages hearing be scheduled pursuant to Rule 55.

On June 27, 2017, Defendant filed a motion to set aside entry and order of default. In support of its motion, Defendant filed the affidavits of Joseph Stubbs ("Stubbs") and Morgan S. Templeton, Esq. ("Templeton"). No affidavits were filed by

Schwartz or any representative of Defendant. Stubbs is a senior claims adjuster with Owner's Insurance Company, Defendant's insurer. In his affidavit, Stubbs acknowledges that he and Owner's Insurance Company received notice of this lawsuit on May 22, 2017. Thereafter, Stubbs attempted to assign defense of this suit to Templeton by emailing him on May 25, 2017 and June 1, 2017. Stubbs did not communicate with Templeton prior to making this assignment and made no effort to confirm Templeton's engagement. Stubbs' emails were not received by Templeton who states that he did not learn of the assignment until after the issuance of the order of default.

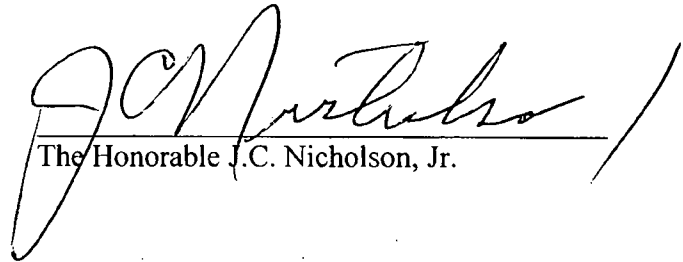
In its memorandum in support of its motion to set aside entry of default and order of default, Defendant submits that Judge Jefferson's order of default is not a judgment of default and that Rule 55(c) governs Defendant's motion. Plaintiff maintains that the more rigorous "*excusable neglect*" standard set forth in rule 60(b) applies.

gcn  
"The power to set aside a default judgment is addressed to the sound discretion of the trial court and will not be disturbed on appeal absent a clear showing of an abuse of discretion," *Melton v. Olenik*, 379 S.C. 45, 48, 664 S.E.2d 487, 490 (Ct. App. 2008). It is the finding of this Court that Defendant's motion does not satisfy the "*good cause*" standard of Rule 55(c) or the "*excusable neglect*" standard of Rule 60(b). In its memorandum, Defendant acknowledges that "*the South Carolina Supreme Court has held that pleadings received and subsequently lost or dilatory acts by an insurance carrier or attorney are not justification to lift an entry of default.*" See *Scruggs v. Ballenger Corp.*, 260 S.C. 509, 510, 197 S.E.2d 91, 92 (1973), *White Oak Manor, Inc. v. Lexington Insurance Company*, 407 S.C. 1, 753 S.E.2d 537 (2014), and *Bissonette v. Joseph*, 170 S.C. 407, 170 S.E. 467 (1933).

While Defendant attempts to distinguish this case from *Scruggs* and *White Oak Manor* and maintains that Stubbs and Defendant's insurance carrier's efforts to assign a defense were steadfast and thwarted by "*unexpected technological occurrences*", the record in this case does not support Defendant's assertions. Stubbs did not communicate with Templeton prior to e-mailing him and made no effort to communicate with Templeton to confirm his receipt of this assignment. Stubbs and Defendant's carrier's efforts were not steadfast. Its failure to engage Templeton was the result of neglect.

It is therefore ORDERED this 8 day of JAN., 201~~7~~<sup>8</sup><sub>9</sub> that Defendant's motion to set aside entry of default and order of default is denied. It is also hereby ORDERED that the proof of service is amended to reflect that the amended summons and complaint was served on Defendant<sup>1</sup>.

Date: \_\_\_\_\_

  
The Honorable J.C. Nicholson, Jr.

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<sup>1</sup> Plaintiff's proof of service contains a scrivener's error that reflects that Schwartz, Defendant's Registered Agent, was served with the summons and complaint. The transmittal letter to Schwartz, as well as the affidavit of default and order of default, accurately reflect that Schwartz was properly served with the amended summons and amended complaint. While Defendant raised this issue in its memorandum, Rule 4(i) provides discretion of the Court to amend any proof of service it deems just.