

IN THE COURT OF COMMON PLEAS
WFG National Title Company

CASE NO. 2016-CP-40-04718
DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC

PLAINTIFF(S)

DEFENDANT(S)

<p>Submitted by: Drew B. Walker</p>	<p>Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant</p>
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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
WFG National Title Insurance Company	DataQuick Lending Solutions, Inc.	\$3,912,550.47
WFG National Title Insurance Company	DataQuick Lending Solutions, LLC	\$3,912,550.47

If applicable, describe the property, including tax map information and address, referenced in the order.

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

RICHLAND COUNTY
FILED
2017 SEP 19 AM 9:22
JENNIFER W. ROBERTS
CLERK
SOUTH CAROLINA

RECEIVED
OCT 12 2018
SC Court of Appeals

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

WFG National Title Insurance Company,

Plaintiff,

v.

DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C/A NO.: 2016-CP-40-04718.

ORDER

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OCT 12 2018

SC Court of Appeals

2017 SEP 19 AM 9:22
JEANETTE R. MADRICE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

THE CASE COMES BEFORE THE COURT pursuant to the motion of the Plaintiff, WFG National Title Insurance Company ("Plaintiff"), seeking an order for default judgment against Defendant DataQuick Lending Solutions, Inc. and Defendant DataQuick Lending Solutions, LLC (collectively referred to as "Defendants") for the causes of action in its Complaint. Plaintiff's motion is based on the Summons and Complaint ("Complaint"), Affidavits of Service, Affidavit of Amount Due, Affidavit of Default filed and the South Carolina Rules of Civil Procedure, including Rule 55(b)(1).

The Defendants were served with the Summons and Complaint and have not responded within thirty (30) days, as required by the South Carolina Rules of Civil Procedure. The Defendants have been entered into default by the Honorable DeAndrea Gist Benjamin as shown in the Order of Entry of Default filed herein on October 27, 2016.

Plaintiff seeks an order for joint and several judgment against Defendants for amounts owed under an agency agreement. The Plaintiff instituted this proceeding against the Defendants for amounts due under the Agreement as defined in Paragraph 17 of the Complaint.

I find that Defendants are in default under the terms of the Agreement, and that liquidated sums are due and owing to the Plaintiff on the claim accounts listed in Exhibit A of the Complaint. The total liquidated amount due to Plaintiff on the accounts as of July 12, 2017, and as shown in the Affidavit of Amount Due, is One Million Two Hundred Ninety-Nine Thousand Eight Hundred Eighty-Eight and 99/100 (\$1,299,888.99) Dollars, as well as court costs and attorney's fees provided for in the Agreement as pled in Paragraph 13 of the Complaint, supported by an Attorney's Fee Affidavit filed herein, and as outlined below.

The liquidated damages owed in this action under the Complaint's First, Second, Third and Fourth Causes of Action against Defendants are due and owing as follows:

Amounts owed under Agreement	\$1,299,888.99
Court Costs - filing fee	\$150.00
Service of Process	\$144.50
Attorney's Fee for this action	<u>\$4,000.00</u>

Amount Due	\$1,304,183.49
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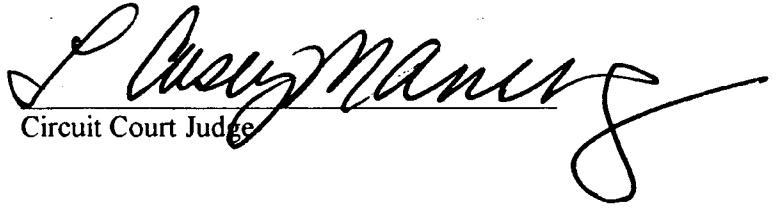
Plaintiff is entitled to treble damages under the Complaint's Fifth Cause of Action for Defendants' violations of the South Carolina Unfair Trade Practices Act, and the trebled amount of the damages awarded above shall be awarded to the Plaintiff and entered against the Defendants in the total amount of:

\$3,912,550.47

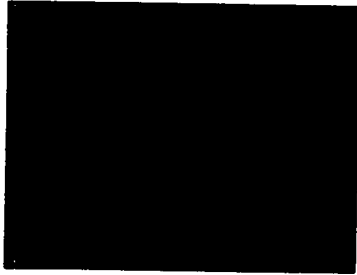
IT IS THEREFORE ORDERED THAT:

The Plaintiff is awarded joint and several judgment against Defendant DataQuick Lending Solutions, Inc. and Defendant DataQuick Lending Solutions, LLC in the amount of Three Million Nine Hundred Twelve Thousand Five Hundred Fifty and 47/100 (**\$3,912,550.47**) Dollars and interest at the statutory rate from the date this judgment is entered until the date paid.

AND IT IS SO ORDERED.


Circuit Court Judge

Sept. 18, 2017
Cola South Carolina



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND

CASE NO. 2016-CP-40-04718

WFG National Title Insurance Company,
Plaintiff,

v.

DataQuick Lending Solutions, Inc. and
DataQuick Lending Solutions, LLC,

DEFENDANTS.

ORDER

RECEIVED

OCT 12 2018

SC Court of Appeals

BACKGROUND

On August 21, 2018, a hearing was held before this Court (hereinafter, the "Hearing") regarding the Defendant DataQuick Lending Solutions, Inc. and DataQuick Lending Solutions, LLC's (collectively, "DataQuick") Motion for New Trial, to Alter or Amend Judgment, and for Relief from Judgment (hereinafter, the "Motion"), filed with this Court. Present at the hearing were Drew B. Walker as counsel for the Plaintiff WFG National Title Insurance Company ("WFG"), of Rogers Lewis Jackson Mann & Quinn, and Defendant DataQuick, represented by William Wilson, III, of Wyche, PA.

DataQuick, with the filing of its Motion, attempts to set aside an entry of default and subsequent default judgment against DataQuick (the "Default Judgment"), and seeks to file an Answer in this action. Alternatively, DataQuick sought to have the Default Judgment vacated and/or amended so as to allow a damages hearing pursuant to Rule 52(a), Rule 59(a), and/or Rule 59(e). Based on the testimony presented at the Hearing, and for the reasons set forth herein, the relief sought by DataQuick in its Motion is Denied.

UNDISPUTED FACTS AND PROCEDURE

The Parties do not dispute that WFG properly served DataQuick's registered agents

with every pleading, motion, proposed order, and other filing in this case. See the Procedural Timeline and Factual Statement in DataQuick's Memorandum in Support of its Motion for Relief.

DataQuick concedes that it internally failed to update its points of contacts with its registered agent, CT Corporation, in South Carolina and Delaware. See Id. at ¶12 of Factual Statement. DataQuick concedes its subsequent Delaware agent, Maples, failed to forward it the properly-served Motion for Default Judgment. Id. at ¶21 of Factual Statement.

DataQuick states it has no employees currently, yet submits two affidavits from individuals on its behalf. Id. at ¶10. DataQuick has always maintained registered agents for service of process in the State of South Carolina and Delaware during the pendency of this lawsuit. Id. at ¶¶ 11, 12. DataQuick states that it has had no business operations in recent years, yet maintains its corporate form, has updated and corrected addresses with its registered agents, and has changed registered agents during the pendency of this lawsuit. Id. at ¶¶ 4, 9, 13, 19. It also claims to have General Counsel. See Affidavit of Adam Fliss at ¶ 2, and Affidavit of Michael LaGatta at ¶ 2.

DataQuick states it has no knowledge or possession of the Agency Agreement between WFG and DataQuick, (upon which WFG's claims are based) (the "Agency Agreement"), and has no knowledge of the substance of Plaintiff's claims. Id. at 11, 12. Nevertheless, DataQuick claims it has defenses, and also that it could unilaterally assign the Agency Agreement to another corporate entity and bases its meritorious defense arguments on liberal assumptions it takes with regard to its unknown contents of the Agency Agreement. Id. at ¶¶ 6, 8, 27 (a), (b) and (d).

DataQuick Lending Solutions, Inc. was served with the Summons and Complaint through its South Carolina registered agent on August 11, 2016 as shown on the Affidavit of Service filed with this Court. DataQuick Lending Solutions, LLC was served with the Summons and Complaint through its Delaware registered agent on August 10, 2016 as shown on the Affidavit of Service filed with this Court. DataQuick did not appear in this action until October 13, 2017 when it filed its Motion, which was over fourteen (14) months after service of the Summons and Complaint. Additionally, the Hearing on the Motion took place over two (2) years after WFG's statutorily-prescribed service of the Summons and Complaint on DataQuick.

LEGAL FINDINGS

I. The Entry of Default Should Not be Set Aside per Rule 60, SCRPC

DataQuick's argument to be relieved from the Default Judgment does not meet the criteria of Rule 60(b), SCRPC. WFG unequivocally served an agent with actual authority to accept service for DataQuick under statute and the South Carolina Rules of Civil Procedure. Rule 4(d)(3), SCRPC, states that service may be made on a corporation by "delivering a copy of the summons and complaint ... to any other agent authorized by appointment or by law to receive service of process..." Further, as a Delaware corporation registered to do business with the South Carolina Secretary of State, DataQuick was an authorized foreign corporation whose registered agent could accept service of process pursuant to S.C. Code Ann. 15-9-240. Finally, WFG properly served DataQuick's registered agent in Delaware pursuant to Rule 4(h), SCRPC.

A. DataQuick has Not Shown Excusable Neglect

The Rule 60 standard for lifting judgment is more stringent than the Rule 55 "good

cause” standard for lifting entry of default. See Sundown Operating Co., Inc. v Intedge Industries, Inc., 383 S.C. 601, 681 S.E.2d 885 (2009). In cases analyzed both under Rule 55 standards and Rule 60 standards, courts have refused to lift default and judgment even when the neglect was not the actual neglect of the Movant (in this instance, DataQuick), but the neglect was imputed to it through its insurer or attorney. Richardson v. P.V. Inc., 283 SC 610, 682 S.E.2d 263 (2009) (holding an agent with apparent authority as being properly served, that the Rule 60 standard is more rigorous than Rule 55, and denying to lift default under the Rule 55(c) “good cause” standard even though the insurance company was assumed to be at fault for Petitioner’s failure to answer the complaint); see also Williams v Vanvokenburg, 312 S.C. 373, 440 S.E.2d 408 (1994) (holding Rule 55 “good cause” standard was not met to lift default when default is due to attorney’s negligent failure to file answer for client). DataQuick’s direct, unimputed failures and neglect does not rise to good cause under Rule 55 standards and therefore, does not meet the more stringent standard for Rule 60.

In the instant case, by serving DataQuick’s registered agents, WFG served agents with actual authority to accept service on DataQuick’s behalf. DataQuick’s failures to internally update who received the process within its corporation after its actual agents received the summons and complaint do not rise to the excusable neglect standard discussed in controlling South Carolina case law. DataQuick’s registered agents had actual knowledge of instant lawsuit and DataQuick presented no excuse for this internal negligence.

Furthermore, the court’s records and DataQuick’s affidavits conclusively show that DataQuick’s registered agent received service of process. DataQuick has failed to provide the Court with conclusive proof to meet the excusable neglect standard provided by Rule 60. McClurg v. Deaton, 380 S.C. 563, 671 S.E.2d 87 (2008) (the Court holding Defendant to a

“conclusive proof” standard under Rule 60, requiring that he show that he had not been served with the summons and complaint). Therefore, DataQuick cannot meet the excusable neglect standard of Rule 60 and is not entitled to the relief it seeks in its Motion.

B. Lack of Promptness and Sufficient Reasoning for DataQuick's Failures; Prejudice

“In determining whether to grant a motion under Rule 60, the trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party.” Micronics, Inc. v. South Carolina Dept. of Revenue, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct. App. 2001). This Court finds that DataQuick lacked promptness and sufficient reasons for its failure to update appropriate personnel with its registered agents. As noted in the Factual Statement, over fourteen months went by between service of the Summons and Complaint and DataQuick’s appearance in the case. At any point during those fourteen months, DataQuick could have audited its deficiencies and uncovered that the people it appointed to receive notices from its registered agent were no longer associated with DataQuick.

DataQuick cannot shift the blame to CT Corporation as CT Corporation sent notices to the individuals that DataQuick requested. Further, CT Corporation remains DataQuick’s registered agent in South Carolina at the present time. When DataQuick chose to change its Delaware agent in December 2016, it could have uncovered its failure to update the addresses and asked the obvious question to CT Corporation – have you forwarded any service of process to those people since their relationship ceased with us. Rather, it did not appear in the case for an additional ten months. With over two years having elapsed since service of the Summons and Complaint on DataQuick and the Hearing on this Motion for Relief, WFG

would suffer significant prejudice due to the dilatory practices and failures of DataQuick and, as such, DataQuick is not entitled to the relief it seeks in its Motion.

C. WFG's UTPA Claim

DataQuick's analysis on the South Carolina Unfair Trade Practices Act ("UTPA") is misguided. Ardis v. Cox, 314 S.C. 512, 519, 431 S.E.2d 27, 32 (Ct.App.), does not hold that any lawsuit with a breach of contract cause of action unequivocally causes a UTPA cause of action to fail. Rather, the Ardis court held that UTPA is "unavailable to redress private wrongs if the public interest is unaffected." Id. In the instant case, WFG cites to 47 claims that were affected by DataQuick's actions. Critically, DataQuick's culpable actions have led to damage to the South Carolina citizenry at large when title premiums increase due to the agents and their insurance carriers not shouldering any of the underwriter's loss. South Carolina consumers completing loan transactions are typically required to purchase title insurance lender's policies in order to obtain financing, and consumers routinely make the prudent choice to purchase owner's policies to protect their own investment. When DataQuick takes culpable actions as alleged in the Complaint, consumer insurance premiums unnecessarily rise, which has a direct effect on South Carolinians. Thus, it is the public that bears the burdens of rising costs due to DataQuick's actions or lack thereof. WFG's allegations in its UTPA cause of action is deemed admitted as plead and the Default Judgment grants the relief requested and contemplates DataQuick's knowing and willful violation of the UTPA and, as such, the judgment should not be set aside.

D. Lack of Meritorious Defense

DataQuick's allegations concerning its legal argument of a meritorious defense are fail. WFG sued the party it has an Agency Agreement with, DataQuick. DataQuick remains

a corporate entity to this day. It can be served. It was served. It failed to file an Answer and lost its right to conduct discovery. The records do not support the suggestion of any assignment of an Agency Agreement. Additionally, the suggestion that such an assignment could be done unilaterally by DataQuick when it admits that it is not familiar with the contents of the Agency Agreement creates more conjecture.

Further, any indemnification DataQuick may be able to seek from Stewart is a Third Party Claim, rather than a meritorious defense to its admitted liability to WFG, and is not considered by this Court. "It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998).

Finally, DataQuick's argument that the judgment is "void" under Rule 60 (b)(4) fails. "The definition of void under the rule (60) only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction. See Universal Benefits, Inc. v. McKinney, 349 S.C. 179, 561 S.E.2d 659 (2002). DataQuick wrote title policies in South Carolina which conferred personal jurisdiction when its South Carolina registered agent was served with process, negating any unsupported defense claim of lack of personal jurisdiction or venue.

For these reasons, DataQuick has failed to show any reason to void the Order under the Rule 60, SCRC, standard. DataQuick's speculation of "likely exculpatory evidence" does not rise to the meritorious defense standard required by South Carolina courts. See Id. and ¶27 of Fliss Affidavit. The McClurg Court, cited by DataQuick, requires "a showing of a prima facie meritorious defense" and holds "[a] party making a motion under Rule 60(b) has the burden of presenting evidence proving the facts essentially to entitle him to relief."

McClurg at 575, 671 S.E.2d at 93-94 (holding that neither appellant met burden of proving prima facie case for meritorious defense). Here, DataQuick has shown no meritorious defense and presented no evidence that would entitle it to relief.

II. The Damages in the Order are Liquidated and Should Not be Set Aside under Rule 60, SCRPC

In the instant action, WFG's damages are liquidated. WFG reviewed corporate records for each of the forty-seven (47) claims enumerated in its Complaint in order to compute sum certain amounts that had already been paid by WFG in the form of loss, expense, charges, attorney's fees and allocated loss adjustment expenses.

DataQuick assertion that the Default Judgment exceeded the amount prayed for in the Complaint in violation of Rule 54(c) is without merit. Rule 54(c) does not require a sum certain amount be plead in the initial Complaint in order to obtain default judgment. Rule 55(b)(1) allows default judgment without hearing for liquidated amounts to be supported by an Affidavit of Debt, upon motion of the party seeking default. In its Complaint, WFG alleged damages exceeding \$25,000.00 and filed an Affidavit of Debt along with its Motion for Default Judgment. South Carolina courts allow the use of Affidavits of Debt in support of default judgments at the time of application for default judgment on liquidated damages and pursuant to Rule 55(b)(1) in lieu of a verified pleading. DataQuick's efforts to conflate Rule 54(c) and Rule 55(b)(1) are incongruent with South Carolina practice and its Rules of Civil Procedure.

Further, this Court finds that any error in the Order of trebling the meager attorney's fees shown by the previously filed affidavit of attorney's fees (\$4,000.00) was harmless error under Rule 61, SCRPC. As shown by the updated Attorney's Fees Affidavit filed with this Court on August 21, 2018, WFG has suffered reasonable attorney's in the amount of

\$20,000.00 for over ninety (90) hours of legal work by WFG's retained firm since its retention in 2016. This amount is well in excess of the \$12,000.00 (\$4,000.00 trebled) awarded in the Order.

Additionally, the issuance of an award for attorney's fees prior to the ten days contemplated in Rule 55(b)(3) resulted in harmless error. While WFG did provide proper notice that it sought attorney's fees in its motion for default judgment as contemplated in Rule 55(b)(3), the Order was entered prior to the ten-day objection period contemplated in the Rule. Nevertheless, ten days did actually go by after Maples was served with the Notice that WFG sought attorney's fees, and no objection was made during that time period concerning the attorney's fees. This resulted in harmless error under Rule 61, SCRCP, and any award of attorney's fees in the Default Judgment should not be set aside.

III. DataQuick is not Entitled to Relief under either Rule 59(a) or Rule 59(e), SCRCP

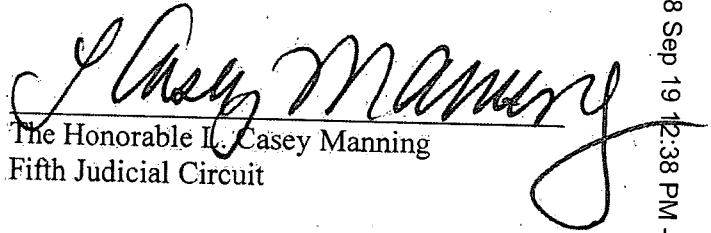
Because this Court issued a default judgment without a hearing, the defaulting DataQuick did not raise any issues at a hearing that could be altered or amended pursuant to Rule 59(e), SCRCP. See Patterson v. Reid, 318 S.C. 183, 456 S.E.2d 437,437 (Ct. App. 1995) (holding "A party cannot for the first time raise an issue by way of a Rule 59(e) motion that could have been raised at trial"). Also, because there was no "action tried without a jury", DataQuick's relief for a new trial under Rule 59(a) fails. For these reasons, and because DataQuick's Motion for Relief was served on October 2, 2017, following service of the Order on September 27, 2017, more than ten days after service was complete, DataQuick's Rule 59 arguments fail, including the tolling for any time to appeal under Rule 59(f). This Court finds that DataQuick is not entitled to the relief it seeks in its Motion as relate to Rule 59(a) and Rule 59(e).

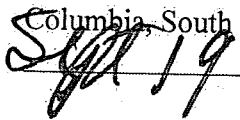
CONCLUSIONS OF LAW

WHEREAS, for the reasons set forth above, this Court finds that the Motion should be denied.

NOW, THEREFORE, the Motion is DENIED.

IT IS HEREBY ORDERED.


The Honorable L. Casey Manning
Fifth Judicial Circuit

Columbia, South Carolina
 19, 2018