

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Karolee Russell, Individually, and as Personal)
 Representative of the Estate of Kevin Brian)
 Russell,)
)
 Plaintiffs,)
)
 v.)
)
 B & R Contracting, LLC, Brian K. Bass, and)
 Richard A. Robertson)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

CASE NO. 2018-CP-4201540

RECEIVED
MAY 13 2019
SC Court of Appeals

ORDER DENYING DEFENDANT ROBERTSON'S MOTION TO RECONSIDER

The matter before the Court is Defendant Robertson's Motion for an Order altering or amending the Court's Order of October 8, 2018, entering default judgment against B&R Contracting, LLC, Brian K. Bass, and Richard A. Robertson, joint and severally. Plaintiff's Counsel, Paul A. McKee, III was present with Defendant Robertson's Counsel, C. Daniel Atkinson at the hearing of this Motion on February 25, 2019.

Plaintiff personally served Defendant Robertson with the Summons and Complaint on May 18, 2018. Plaintiff filed an affidavit of default against Defendant Robertson on June 20, 2018. On August 21, 2018, Plaintiff served Defendant Robertson with a notice of the final hearing, scheduled on Tuesday, September 11, 2018 at 11:00am. On the morning of September 11, 2018, Defendant Bass informed Plaintiff's Counsel that he was unavailable because of the evacuation order for Hurricane Florence and the hearing was rescheduled. On the same day, Plaintiff served Defendant Robertson with a second notice of hearing, scheduled for September 27, 2018.

At the February 25, 2019 hearing on Defendant Robertson's Motion to Reconsider, the Court evaluated Defendant's Motion to Set Aside Default, based on Robertson's request at the September 27, 2018 hearing that the Court grant him leave to file an Answer. 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), SCRPC. 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. Stalaker*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994).

Appellate courts will reverse a trial court decision when there is an abuse of discretion, and “an abuse of discretion occurs when the decision is based upon an error of law or when the order is without evidentiary support.” *Stark Truss Co., Inc. v. Superior Constr. Co.*, 360 S.C. 503, 508, 602 S.E.2d 99, 101 (Ct. App. 2004).

Defendant Robertson stated that his reason for the default was because he thought Mr. Bass had filed a timely Answer for him. (Hr’g Tr. 10:1-7). The Court does not find Mr. Robertson’s explanation satisfactory.

Defendant Robertson’s first appearance in this matter was at the final hearing on October 8, 2018. At no time did Defendant Robertson communicate with Plaintiff’s Counsel prior to the hearing. He was personally served with the Summons and Complaint and mailed two notices of hearing over a period of approximately five months. At the final hearing, Defendant Robertson first asserted affirmative defenses when cross-examining Mrs. Russell. The Court finds that Defendant’s request for relief at the final hearing is untimely.

Defendant Robertson failed to timely Answer or otherwise plead, and, as a result of his failure to timely answer, does not deny the allegations in the Complaint. The Court found that, “[a]t this point there has been no denial that the deposit was made or any other denial.” (Hr’g Tr. 11:13-19).

The Court notes that the late Mr. Kevin B. Russell was the signator on the contract and that he is now deceased. The Court also finds that based upon the testimony presented and by Defendant’s failure to deny the allegations in the Complaint, evidence existed of a relationship between the co-Defendants and the construction project with Plaintiff.

Considering the foregoing, the Court finds that Defendant’s Motion to Alter or Amend Judgment is hereby DENIED.

March 7, 2019
Spartanburg, South Carolina

Judge's Electronic Signature Page to Follow.



Spartanburg Common Pleas

Case Caption: Karolee Russell vs B & R Contracting LLC etal
Case Number: 2018CP4201540
Type: Master/Order/Other

It is So Ordered

s/Judge Gordon G Cooper-3065

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