

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

SAMANTHA L. ANTLEY,

Plaintiff,

vs.

DART SHELTER, LLC d/b/a THE
SHELTER KITCHEN & BAR and
PRESTON YELVERTON,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-6176

**ORDER DENYING
DEFENDANT DART SHELTER,
LLC's MOTION TO ALTER OR
AMEND PURSUANT TO RULE**

**60(b), SCRCP
RECEIVED**

JUL 05 2019

SC Court of Appeals

The Honorable William H. Sears, Jr.

PRESIDING JUDGE:

PLAINTIFF'S ATTORNEYS:

Daniel S. Slotchiver, Esq.
Edward L. Phipps, Esq.
Andrew J. McCumber, Esq.

DEFENDANT'S ATTORNEYS:

Benjamin B. Davis, Esq.
Mark A. Mason, Esq.
Salah H. Hibri, Esq.

FILED
JULIE J. AMBROSINO
CLERK OF COURT
2019 JUN 12 PM 3:27

THIS MATTER comes before this Court by way of Defendant Dart Shelter, LLC's Motion for Relief from a Judgment Pursuant to Rule 60(b), SCRCP.

The Summons and Complaint in this action were filed on December 4, 2017. An Amended Summons and Complaint were filed on December 11, 2017. Defendant Dart Shelter, LLC was served via its registered agent on or about December 12, 2017. The Affidavit of Service was filed on January 11, 2018.

Having failed to answer or otherwise defend the Complaint, Defendant was declared in default by Order of this Court dated February 5, 2018. Thereafter, Defendant moved to set aside the default. The Court denied Defendant's motion after a hearing and extensive briefing was conducted with respect to same. (See, January 15, 2019 Order Denying Defendant's Motion to Set Aside Default).

Defendant Yelverton was dismissed from this action by stipulation on April 10, 2018. Notice of the damages hearing was sent to all parties by the Court. With the Defendant in Default and having been duly served with all pleadings, the matter proceeded to a hearing on or about March 13, 2019 to determine Plaintiffs' damages as prayed for in the Complaint. On or about April 9, 2019, after a careful review of all the evidence and testimony presented, this Court entered judgment in favor of the Plaintiff, Ms. Samantha Antley, in the amount of \$882,035.00. Defendant subsequently filed the present Motion for Relief from Judgment or Order pursuant to Rule 60(b), SCRPC.

Having considered the entire record of this case including the memorandum in support and in opposition to the Motion filed by the respective parties, I make the following Findings of Fact and Conclusions of Law as required by Rule 52, SCRPC. Any Finding of Fact, which is more appropriately denominated as a Conclusion of Law shall be treated as such, and vice-versa.

FINDINGS OF FACT

1. I FIND that each of the above sentences in this Order are incorporated herein by reference as if they were reproduced verbatim, and that each are deemed to be findings of fact by this Court.
2. I FIND that the parties hereto and the subject matter hereof are within the jurisdiction of this Court.
3. I FIND that the Plaintiff is a resident of South Carolina at time of the commencement of this action.
4. I FIND that Defendant is a resident of the State of South Carolina and was so residing at the commencement of this action.
5. I FIND that Defendant timely filed the present motion within the time-limits imposed by Rule 60(b), SCRPC.

6. I FIND that service of process of the Summons and Complaint was proper as to Defendant.

7. I FIND that there is no requirement imposed by the South Carolina Rules of Civil Procedure that a Plaintiff provide courtesy copies of pleadings to insurance carriers.

8. I FIND that there is no dispute that Defendant was properly served pursuant to the South Carolina Rules of Civil Procedure 4(d)(3) and 4(d)(8).

9. I FIND that Defendant failed to timely respond and that the Entry of Default was proper, and that denial of the Defendant's Motion to Set Aside Default was proper.

10. I FIND that Notice of the damages hearing was properly noticed and served upon Defendant and that it satisfies the requirements of Rule 55(b)(2), SCRCPP and Defendant's due process rights.

11. I FIND that the Defendant was aware of, and actually participated in, the damages hearing on March 13, 2019.

12. I FIND that as a result of the evidence and testimony presented at the March 13, 2019 hearing, this Court entered judgment in favor of the Plaintiff in the amount of \$882,035.00, and I hereby incorporate by reference this Court's findings of fact and law with respect that award as if the same were fully restated verbatim herein.

CONCLUSIONS OF LAW

1. Rule 60(b), SCRCPP allows the circuit court to relieve a party from a judgment for "mistake, inadvertence, surprise, or excusable neglect..." Rule 60(b)(1), SCRCPP.

2. "In determining whether a default judgment should be set aside under Rule 60(b)(1), [t]he promptness with which relief is sought, the reasons for the failure to act promptly, the existence of [a] meritorious defense, and the prejudice to the other parties are relevant." *New Hampshire Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 379 (Ct. App. 1993) *Hill v. Dotts*, 547 S.E.2d 894, 345 S.C.

3. A corporation is served properly “by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process...” Rule 4(d)(3), SCRCF

4. Service of a summons and complaint upon a corporate defendant “may be made by the plaintiff... by registered or certified mail, return receipt requested and delivery restricted to the addressee.” Rule 4(d)(8), SCRCF

5. “Once papers have been served on an officer of the corporation, the corporation then has actual notice of the action.” *Pioneer Util. Corp. v. Scott-Newcomb, Inc.*, 26 F.Supp. 616 (E.D.N.Y.1939). *quoting Bage, LLC v. Southeastern Roofing Co. of Spartanburg, Inc.*, 646 S.E.2d 153, 157, 373 S.C. 457, 466 (S.C. App. 2007).

6. A party’s “failure to understand the legal process is not a sufficient reason to excuse his tardy reply.” *Hill v. Dotts*, 547 S.E.2d 894, 897, 345 S.C. 304, 310 (S.C. App. 2001).

7. “[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.” *Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (S.C. App.1988).

8. “It is always a matter of regret that a party should not have his day in court. However, [where a party has been] duly served with the summons and complaint [it is their] duty to answer the complaint ... [and they] must suffer the consequence of [their] failure to answer.” *Williams v. Ray*, 232 S.C. 373, 383–84, 102 S.E.2d 368, 373 (1958);

9. “Our Courts have long held that in order to establish that service has been properly effected, the plaintiff need only show compliance with the civil rules on service of process.” *McCall v. IKON*, 363 S.C. 646, 652, 611 S.E.2d 315, 317 (Ct. App. 2005); *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 67 (Ct. App. 1996).

10. "When these rules are followed, there is a presumption of proper service." Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995).

11. "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).

12. 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), SCRPC.

13. "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." *Sundown v. Intedgy Industries*, 681 S.E.2d 885, 383 S.C. 601 (2009).

14. "[A] party making a motion under Rule 60(b) has the burden of presenting evidence proving the facts essential to entitle him to relief." *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991).

15. I FIND that the grounds proffered by Defendant to set aside the judgment pursuant to Rule 60(b) virtually mirror those raised in their previous Rule 55 Motion, wherein the Court found a lack of "good cause" to set aside the entry of default. (See, January 15, 2019 Order Denying Defendant's Motion to Set Aside Default).

16. I likewise FIND that the grounds proffered by Defendant in the present motion are insufficient to satisfy the even higher burden of a Rule 60(b) motion.

17. I FIND that the failure of the Defendant's registered agent to promptly forward the Summons & Complaint to Defendant's insurer or attorney, whether due to their failure to actually read the Summons & Complaint or to carefully inspect the contents Certified Mailing sent by

Plaintiff's Counsel does not qualify as excusable neglect or inadvertence sufficient to set aside a default judgment.

18. I FIND that it was proper for Counsel for the Plaintiff to serve Defendant, a corporation, by certified mailing a copy of the Summons and Complaint to the Defendant's registered agent as required under Rules 4(d)(3) and 4(d)(8).

19. I FIND that Plaintiff was under no legal duty to provide a courtesy copy to a party's "private counsel" who had not otherwise appeared in a matter or to a Defendant's insurer.

20. I FIND that due to the communications by Defendant's "private counsel" to Plaintiff's Counsel regarding their role in the case moving forward and their refusal to accept service of the Summons & Complaint, Plaintiff was proper in serving the Defendant as required under the Rules of Civil Procedure.

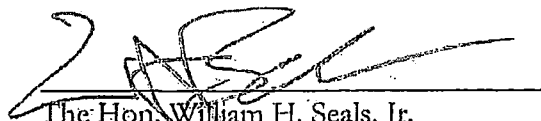
21. I also FIND that Counsel for the Plaintiff did not engage in any "misconduct" as alleged by the Defendant, as was previously addressed and ruled upon by the Court in connection with the Defendant's Rule 55 motion.

BASED UPON THE FOREGOING,

IT IS ORDERED, ADJUDGED and DECREED that the Defendant's Motion for Relief from Judgment.

IT IS FURTHER ORDERED, ADJUDGED and DECREED that the Clerk of this Court shall enter judgment in the foregoing amount against Defendant Dart Shelter, LLC, in the Judgment Rolls of Charleston County, South Carolina.

AND IT IS SO ORDERED!



The Hon. William H. Seals, Jr.

Presiding Judge

Court of Common Pleas for the Ninth Judicial Circuit

June 10, 2019
Charleston County, South Carolina