

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Larry Wayne Knox, Special Referee

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SC Court of Appeals

C/A No: 2016-CP-13-00681
Appellate Case No: 2019-000674

Griffin Chrysler Jeep Dodge, Inc.Plaintiff

v.

Tonny Edward SipeDefendant

and

Tonny Edward SipeRespondent

v.

Jason S. KingAppellant

INITIAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUE ON APPEAL

1. **WHETHER THE SPECIAL REFERE ERRED IN DETERMINING THAT JASON KING WAS NOT ENTITLED TO RELIEF UNDER RULE 60(b), SCRPC.**

STATEMENT OF THE CASE

This case arises from a Summons and Complaint filed in Chesterfield County, South Carolina by Griffin Chrysler Dodge Jeep, Inc. (hereinafter “Griffin Chrysler”) against Respondent, Tonny Edward Sipe (hereinafter “Sipe”) for a breach of contract claim on September 12, 2016. (*See* Complaint). Griffin Chrysler sought damages against Sipe relating to the purchase of a Dodge pickup truck. (*Id.*). Sipe timely filed an Answer and Third-Party Complaint against Jason King, (hereinafter “King”) as a Third-Party defendant in the matter. (*See* Answer and Third-Party Complaint). King was personally served with the Answer and Third-Party Complaint on September 26, 2016. (Motion for Entry of Default and Order of Reference p.1) (*See* also Affidavit of Service). King did not answer the Complaint or file any other pleading or notice of appearance. (Order of Reference p. 1). Default was entered against King on January 17, 2017 and the matter was referred to Larry W. Knox, as special referee for Chesterfield County. (*Id.*).

On January 30, 2017, a default damages hearing was held. (*See* Order of Judgment). Despite having been properly noticed for this hearing, King was not present or represented by counsel at this hearing. (*Id.* at 1). (*See* also Certificate of Service on Notice of Hearing). At the conclusion of testimony and after the court received evidence presented by the parties present, the special referee entered judgment against King in the amount of \$135,000. A written order

reflecting the monetary judgment was entered on February 2, 2017. (Id. at 5). Subsequently, King was properly served with the Order of Judgment against him. (See Certificate of Service on Order of Judgment).

August 21, 2017, more than six months later, King filed a motion for relief from default judgment. (See Third-Party Defendant's Notice of Motion & Motion for Relief from Default Judgment). A hearing on this motion was held on October 18, 2018 before Larry W. Knox as special referee. (See Transcript of Special Referee Hearing). Upon conclusion of this hearing, King's motion for relief from judgment was denied. (See Order Denying Motion to Set Aside Default Judgment)

STATEMENT OF THE FACTS

On August 3, 2015, Sipe entered into a contract to purchase a Dodge pickup truck from Griffin Chrysler. (Complaint pp. 1-2). As part of the purchase agreement, Sipe agreed to trade in to Griffin Chrysler a 2011 Ford pickup truck in exchange for credit toward his purchase. This Ford pickup truck was subject to a purchase agreement between Sipe and King. As a condition of the purchase agreement, King held the title to the vehicle. (Answer and Third-Party Complaint p. 2). Sipe delivered the Ford truck to Griffin Chrysler and simultaneously fulfilled his obligation under the purchase agreement with King. (Complaint pp. 2). Upon fulfilling his obligation under the lease agreement, Sipe demanded the vehicle title from King. King refused to release the title to the Ford truck. Consequently, Sipe was unable to deliver the title of the Ford truck to Griffin Chrysler (Answer and Third-Party Complaint p. 2).

Griffin Chrysler brought an action against Sipe seeking damages, along with a demand

for delivery of the title of the Ford truck. (See Complaint). Sipe timely filed an answer and third-party complaint, naming King as a third-party defendant. (See Answer and Third-Party Complaint). King made no appearance in the legal action and did nothing to acknowledge service of the Third Party Complaint. Accordingly, default was entered and the matter was referred to the special referee (See Entry of Default and Order of Reference). King made no appearance at the damages hearing and failed to acknowledge the matter in any way until more than six months after judgment was entered against him. (See Order of Judgment).

ARGUMENT

STANDARD OF REVIEW

"Whether to grant or deny a motion under Rule 60(b) is within the sound discretion of the trial judge." *Coleman v. Dunlap*, 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). On review, the court is limited to determining whether the trial court abused its discretion in granting or denying such a motion. *Saro Invs. v. Ocean Holiday P'ship*, 314 S.C. 116, 124, 441 S.E.2d 835, 840 (Ct. App.1994). "An abuse of discretion occurs when the trial court's decision is unsupported by the evidence or controlled by an error of law." *Strategic Res. Co. v. BCS Life Ins. Co.*, 367 S.C. 540, 544, 627 S.E.2d 687, 689 (2006).

I. THE COURT DID NOT ERR IN DENYING KING'S MOTION BROUGHT PURSUANT TO RULE 60(B), SCRPC AND THE DEFAULT JUDGMENT IS VALID.

As a basis for this appeal, King asserts that Sipe's Third-Party Complaint against King was not properly plead under Rule 14(b), *South Carolina Rules of Civil Procedure* and thus, the

judgment entered against King is void *ab initio*. King bases his argument to set aside the default judgment upon Rule 60(b), *SCRPC* “(1) mistake, inadvertence, surprise, or excusable neglect. . . [and/or] (4) the judgment is void. (Appellant’s Initial Brief pp. 2-3). King further contends that a party must plead some form of derivative liability for a third-party complaint to be properly pled. King argues that this form of pleading is so narrowly construed that any failure to specifically address some combination of indemnification, either express or implied, and/or contribution, renders a complaint fatally defective and thereby voids any judgment entered upon such a complaint. Sipe asserts that such a strict interpretation of Rule 14(a), *SCRPC*, is not consistent with South Carolina law and that the judgment is not void.

Rule 14(a), *South Carolina Rules of Civil Procedure* allows a defendant in an action to join a third-party defendant to that action “. . . who is or may be liable to him for all or part of the plaintiff’s claim against him.” Rule 14(a), *SCRPC*. Rule (8), *South Carolina Rules of Civil Procedure* requires that:

A pleading which sets forth a cause of action, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court’s jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled. Rule 8(a), *SCRPC*.

Rule 8(e)(1), *SCRPC* further explains that, “[e]ach averment of a pleading shall be simple, concise, and direct. *No technical forms of pleading or motions are required.* Rule 8(e)(1), *SCRPC* (emphasis added). “All pleadings shall be so construed as to do substantial justice to all parties.” Rule(8)(f), *SCRPC*. “It is elementary that the principal purpose of pleadings is to inform

the pleader's adversary of legal and factual positions which he will be required to meet on trial.” *S.C. Nat'l Bank v. Joyner*, 289 S.C. 382, 387, 346 S.E.2d 329, 332 (Ct.App.1986).

Through his Answer and Third-Party Complaint, Sipe sought to allege comparative equitable indemnity against King in response to the allegations made by Griffin Chrysler against him. (See Answer and Third-Party Complaint). King was sufficiently on notice that Sipe intended to show equitable indemnity against King as it related to Griffin Chrysler's allegations against Sipe. The facts alleged in Sipe's Answer and Third-Party Complaint were sufficient to maintain an action against King pursuant to Rule 8, *SCRCP*. The facts also allege that King's actions were the complete and total reason for the damages against Sipe and Griffin Chrysler.

King asserts that his inclusion in this matter as a Third-Party Defendant was so radically defective, as the Court lacked subject matter jurisdiction over the third party complaint, that the default judgment should be void. (Appellant's Initial Brief pp. 4-6). Sipe disagrees. Assuming there are defects in the Third-Party Complaint, the judgment is rendered only *voidable* and thus still within the discretion of the court as to whether or not it should be set aside. The court maintains subject matter jurisdiction over the action, King merely seeks to diminish his own self-inflicted damages that resulted when he ignored the Sipe's third-party complaint.

The courts have long defined a void judgment as “. . . one so affected by a fundamental infirmity that the infirmity may be raised even after the judgment becomes final.” *United Student Aid Funds, Inc. v. Espinosa*, 130 S. Ct. 1367, 1377, 559 U.S. 260, 270 (2010). “[C]ourts considering Rule 60(b)(4), [*SCRCP*] motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the

court that rendered judgment lacked even an ‘arguable basis’ for jurisdiction.” *Id.* Where jurisdiction is not at issue, a defect in a judgment is voidable, not void. *Innovative Waste Mgmt. Inc. v. Crest Energy Partners GP, LLC*, 423 S.C. 611, 611, 815 S.E.2d 780, 782 (Ct. App. 2018). “There is a wide difference between a want of jurisdiction in which case the court has no power to adjudicate at all, and a mistake in the exercise of undoubted jurisdiction in which case the action of the trial court is not void. . . .” *Piana v. Piana*, 239 S.C. 367, 34 123 S.E.2d 297, 299 (1961) (quoting *Jackson City Bank & Trust Co. v. Fredrick*, 271 Mich 538, 260 N.W. 908, 909 (Mich., 1935)).

The court has subject matter jurisdiction over the matters contained within the Third-Party Complaint. Subject matter jurisdiction refers to the nature of the claim or controversy. This matter is civil in nature and involves liability for damages arising between the parties. Furthermore, King makes no substantial argument that there is a want of jurisdiction in this case. Appellant’s argument is solely one of procedural posturing in an attempt to litigate the matters contained within the Third-Party Complaint. (Appellant’s Initial Brief pp. 6-7). The time for arguments has passed and default was entered by the Court. The matter before the court remains only the issue of damages. King does not argue that the court lacks jurisdiction, but rather he argues the procedural position of where he is situated in the matter. King contends he should not have been brought into the litigation of this matter unless and until judgment was entered against Sipe. Perhaps King’s argument would have made a compelling basis for a motion to dismiss, but it does not void the judgment all together where the court maintains subject matter jurisdiction.

(Id). The court, within its discretion, denied King's motion for relief from the judgment, and held that the judgment, based in default, is valid. (See Special Referee Order).

Our courts mandate a party seeking to set aside a default judgment to also raise a meritorious defense". *Mcclurg v. Deaton*, 395 S.C. 85, 92, 716 S.E.2d 887, 891 (2011). "It is in the interest of judicial efficiency that our courts require a meritorious defense." *Id.* Our courts have noted that, "[w]hatever doesn't make a difference doesn't matter" in the law." *Id.* (quoting *McCall v. Finley*, 294 S.C. 1, 4, 362 S.E.2d 26, 28 (Ct.App.1987)). The court explains that, "[a]s the meritorious defense requirement derives from the policy that courts do not engage in acts of futility:" *Id.* "[I]n determining whether to set aside a default judgment under Rule 60(b), the [court] should consider the following relevant factors: (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 parties. *McClurg v. Deaton*, 671 S.E.2d 87, 93, 380 S.C. 563 (Ct. App. 2008).

Appellant has made no argument for a meritorious defense. Appellant has offered no reasoning as to how, if given a second opportunity, that the rehearing of this matter could have some different result than the trial court finding King to be liable for Sipe's damages. The trial court took notice of this lack of a meritorious defense. (Order Denying Motion to Set Aside Default Judgment p. 5). The facts of this case are not in dispute. King withheld the title of the vehicle from Sipe, despite fulfilling his obligation to King under the purchase agreement and having knowledge of the contractual obligation Sipe had to Griffin Chrysler. (Transcript. Exhibit D-1). The trial court notes that "Mr. King would not produce the title of the vehicle. As a result,

[Griffin Chrysler] has had possession of the truck since 2015 but cannot sell it or otherwise dispose of it because [Griffin Chrysler] does not have title to it.” (Special Referee Order p. 2). Under whatever cause of action or placement of King in the caption of this matter, the facts remain unchanged. King wants this Court to ignore those facts and all of King’s self inflicted default to focus on an alleged procedural defect to cure judgment rendered based on his own default. King failed to answer the third-party complaint. (Order Denying Motion to Set Aside Default Judgment p. 3). King failed appear at the damages hearing. (Id.). King took in excess of six months to file a motion to set aside the default. (*See* Motion to Set Aside Default). King would have the court forego final disposition of this matter, that has now been in litigation for over three years, to Sipe to merely return to the court with a new Summons and Complaint naming King as a defendant so that he might be relieved from judgment for no other reason than he ignored the Third-Party Complaint for nearly a year. Such a result would only serve to prejudice Griffin Chrysler and Sipe in further delaying justice. Sipe respectfully requests this Court uphold the trial court’s discretion to deny King’s motion to set aside and find the default judgment against King is valid and enforceable.

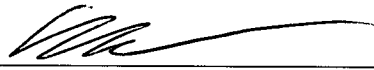
CONCLUSION

Based upon the foregoing argument and citations of authority, Sipe respectfully request this Court affirm the ruling of the trial court and deny King’s request to reverse the Order Denying King’s Motion to Set Aside Judgment.

[Signature block to follow.]

Respectfully Submitted,

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Griffin Chrysler Jeep Dodge, Inc.....Plaintiff

v.

Tonny Edward Sipe.....Defendant

and

Tonny Edward Sipe.....Respondent

Jason S. King.....Appellant

PROOF OF SERVICE

I certify that I have served the Initial Brief of Respondent and Respondent's Designation of Matters to Be Included in the Record on Appeal on counsel listed below by depositing a copy of them in the United States Mail, postage prepaid, on August 16, 2019 addressed as indicated below.

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August 16, 2019

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AUG 19 2019
SC Court of Appeals

The Honorable Jenny Abbott-Kitchings
Clerk of Court
Post Office Box 11629
Columbia, South Carolina 29211

RE: Griffin Chrysler Jeep Dodge, Inc. v. Tony Edward Sipe; Tony Edward Sipe v. Jason S. King

Case No. 2019-000674

Dear Ms. Kitchings:

Enclosed herewith, please find one copy of the Initial Brief of Respondent, Respondent's Designation to be Included in Record on Appeal, and Proof of Service, along with one copy of each in the above referenced matter. At your convenience, please file the originals and mark the copies "Received" and return the same to my office in the included self-addressed, stamped envelope.

If you have any questions or concerns, please do not hesitate to contact me.

Sincerely,


M.W. Cockrell, III

CC: Robert King, Esquire
Wallace H. Jordan, Jr., Esquire

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