

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PTA-FLA, Inc.,

Plaintiff,

vs.

TW Telecom Holdings Inc., a Delaware,
corporation; and DOES 1-10, inclusive,

Defendants.

) IN THE COURT OF COMMON PLEAS

) C/A No. 2015-CP-4001394

ORDER

RECEIVED

FEB 20 2020

SC Court of Appeals

JEANETTE W. McBRIDE
C.C.P. & G.S.

2015 JUL 16 PM 3:41

RICHLAND COUNTY
FILED

This matter came before the Court on June 24, 2015, at a motions hearing between the plaintiff PTA-FLA, Inc. d/b/a ClearTalk ("ClearTalk") and the defendant TW Telecom Holdings, Inc. ("TWTC"). ClearTalk moved for an entry of default, which was entered by this court on May 6, 2015. TWTC, on May 12, 2015, filed its Motion to Set Aside Entry of Default and For Late Answer pursuant to 6(b) and 55(c) SCRPC. For the reasons set forth below, TWTC's motion is **DENIED**.

BACKGROUND

ClearTalk filed this case against TWTC after TWTC purportedly failed to uphold its obligations under a contract entered into between the parties under which TWTC would provide ClearTalk wholesale internet and transport services under a fixed payment schedule. After TWTC's alleged failure to provide the promised services and bill according to the fixed schedule, ClearTalk filed the current action alleging as causes of action breach of contract, breach of contract accompanied by fraudulent act, fraud in the inducement, and promissory estoppel.

SCANNED

ClearTalk properly effected service by serving the Summons and Complaint on TWTC's registered agent on March 16, 2015. According to an affidavit filed on behalf of TWTC, and as grounds for its motion, TWTC indicates that its single gatekeeper of lawsuits, Ryan McManis of Level 3 Communications, LLC (TWTC's parent company) was thereafter properly served with the Summons and Complaint, but neglected to realize such. McManis asserts that on March 18, 2015, the day that ClearTalk's Summons and Complaint reached his inbox, McManis was in meetings all day organizing an HR project. McManis further asserts that, on the following day, he presented at this HR meeting for most of the day, was part of an executive meeting at work, and then left the office to pick up his four children from various activities. McManis' affidavit fails to account for any activity on Friday, March 20, 2015, two days following his receipt of the Summons and Complaint, that might have prevented him from checking his email for any service against TWTC or Level 3.

McManis further asserts that "during most of the next week," which would presumably be March 23-27, 2015, McManis was out of the office at offsite meetings, and his contact with the office was limited. Though McManis does indicate that he had little contact with the office during this time, he does not indicate whether his access to email was in any way restricted. The fact that email may be accessed remotely on personal PCs, laptops, tablets, or mobile devices is a commonly recognized principle. The same consideration applies to McManis' statement that he was away for the "next week" (presumably March 31-April 3, 2015) when McManis went on family vacation and had "limited contact" with the office. McManis asserts that "during this incredibly hectic couple of days and weeks, [he] did not see the Summons and Complaint and did not send it to outside counsel for handling." Again, McManis does not account for any reason why he would not have seen the Summons and Complaint during the weeks of April 6-10

GL-2

or April 13-17, 2015, when TWTC still might file a timely answer, nor does he account for the weeks of April 20-24 and April 27-May 1. In other words, McManis allowed the Summons and Complaint to sit on his desk or in his email for seven (7) weeks before assigning it to outside counsel and most of that time he attributes only to "exceptional circumstances," which he fails to identify. In short, McManis simply states in his affidavit that though he is an attorney and though he is responsible for reviewing and delegating time-sensitive legal matters, and though he receives notifications of service via email, he neglected to read his email because he was busy. On the days that are unaccounted for in the affidavit, one may infer from his silence that McManis did not exercise due diligence by checking for mail that he might have missed during his hectic days and weeks. Moreover, this affidavit indicates neither TWTC nor McManis took precautions to implement a system that would allow another individual within the company to handle incoming legal matters in McManis' absence.

LEGAL STANDARD

Rule 55(c), SCRPC, provides that "[f]or good cause shown the court may set aside an entry of default[.]" The good cause 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." *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 604, 681 S.E.2d 885, 886 (2009). If a movant puts forth a satisfactory explanation for the default, the trial court should then consider three factors: "(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." *Id.* In this analysis, our appellate courts have routinely looked to what reason, if any, the defendant has offered as the reason for default. See *Bage, LLC v. Southeastern Roofing Co. of Spartanburg, Inc.*, 373 S.C. 457, 474, 646 S.E.2d 153,

3

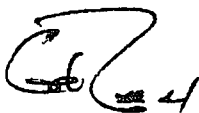
SCANNED

162 (Ct. App. 2007); *Stark Truss Co. v. Superior Const. Corp.*, 360 S.C. 503, 510, 602 S.E.2d 99, 102 (Ct. App. 2004) (defendant “had no good reason . . . for failing to act”); *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) (court examining insufficient reason for failing to answer complaint). Notably, “the trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for finding that of the lack of good cause.” *Sundown*, 383 S.C. at 604, 681 S.E.2d at 886.

Discussion

Rule 55(c), SCRCP, states that an entry of default may be set aside for “good cause” and squarely puts the burden of showing good cause on the moving party, in this case TWTC. TWTC asserts that McManis’ failure to review the Summons and Complaint in his email inbox due to being busy on various days constitutes good cause to set aside the entry of default. There is no showing that McManis, on the days unaccounted for in his affidavit, took any measures to review the Summons and Complaint. Though McManis’ affidavit indicates that he was primarily out of the office on days following the service of the Summons and Complaint, the affidavit does not allege that this would impair McManis’ ability to check his email remotely. As such, McManis’ affidavit fails to prove that he, an attorney who is expected to understand the time-sensitive nature of legal proceedings, was anything but reckless in failing to check his email where McManis 1) receives notifications of legal matters by email; and 2) is the sole gate-keeper of lawsuits for TWTC.

South Carolina courts have recognized that the mishandling of service of process and losing track of a summons and complaint within a corporation is not good cause to set aside default. *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 212, 456 S.E.2d 897, 900 (1995) (upholding trial courts entry of default where “[l]osing a summons and complaint within the



corporation" offered as reason to set default aside); *Bage, LLC*, 373 S.C. at 473, 646 S.E.2d at 162 (finding defendant "mishandled the service of process of this lawsuit"); *Stark Truss Co.*, 360 S.C. at 506, 602 S.E.2d at 102 (finding corporate defendant failed to send summons and complaint to its attorneys until after 30 days from service). The case at hand falls squarely into this line of cases. McManis' affidavit demonstrates that TWTC's faulty system of filtering and delegating legal tasks leads to the mishandling of summons and complaints. The Summons and Complaint essentially became lost within McManis' inbox, causing TWTC to fail to answer in a timely manner.

To set aside an entry of default in this case would be inappropriate because TWTC has failed meet its burden of showing good cause for its failure to timely answer the Summons and Complaint. As a matter of law, failing to answer a Summons and Complaint because the papers were lost within a corporation is not good cause.

Moreover, as explained in the *Sundown Operating* case, because TWTC has failed to set forth a reason for its failure to respond which amounts to "good cause" under Rule 55(c), this Court need not consider TWTC's arguments relating to factors of the timeliness of a response to the entry of default, meritorious defenses, or prejudice to the Plaintiff. Thus, TWTC's Motion is denied.


IT IS THEREFORE ORDERED that Defendant TW Telecom Holdings, Inc. is adjudged to be in default in an amount to be set at a hearing at a later date; and

GR #5

IT IS FURTHER ORDERED that the Motion to Allow Defendant TW Telecom Holdings, Inc. to File a Late Answer is denied.

AND IT IS SO ORDERED.

Dated: July 26, 2015
Columbia, South Carolina


The Honorable G. Thomas Cooper, Jr.
Presiding Judge, Fifth Judicial Circuit