

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

R. Scott Sprouse, Circuit Court Judge

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DEC 01 2020

SC Court of Appeals

Case No. 2019-CP-04-00337

Frances K. Chestnut, Elizabeth Diane Keese,
Sylvester Keese, Arthur B. Keese and Mary K. Taylor,

Respondents.

v.

Florence Keese, Marcy Keese, Margo Keese and
Marshall Keese, pro se,

Appellants.

AMENDED FINAL BRIEF OF RESPONDENTS

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STATEMENT OF ISSUES ON APPEAL

1. DID THE CIRCUIT COURT JUDGE ABUSE HIS DISCRETION BY NOT SETTING ASIDE THE ENTRY OF THE DEFAULT JUDGMENT.

STATEMENT OF THE CASE

This matter came before the Honorable Scott R. Sprouse on December 12, 2019 on the Appellants' Motion filed on August 2, 2019 (Motion to Set Aside Default Judgment, p. 16) to Set Aside the Entry of the Default Judgment (Order of Default and Judgment, pp. 13-14). The Default Judgment (Order of Default and Judgment, pp. 13-14) was entered based on the Complaint (Summons and Complaint of Respondents, pp. 2-5) filed by the Respondents on February 20, 2019 and served on all of the Appellants on April 10, 2019. An Affidavit of Default was filed on May 17, 2019 and the Default Order (Order of Default and Judgment, pp. 13-14) was signed on July 1, 2019 by Judge Sprouse.

The Complaint (Summons and Complaint of Respondents, pp. 2-5) involves a quiet title action brought by the Respondents to adjudicate and terminate the putative interest of the Appellants in the real property. Given the failure to answer, the only issues before Judge Sprouse at the Motion Hearing concerned the issues pertinent to the entry of the Default Judgment (Order of Default and Judgment, pp. 13-14).

The Notice of Appeal was filed and served February 19, 2020. The Appellants' Brief was filed on May 30, 2020.

The Respondents in their Statement of the Case seek to argue the case substantively. The Respondents reiterate that the case now on appeal deals only with the Circuit Court's decision to uphold the entry of the Default Judgment (Order of Default and Judgment, pp. 13-14).

STANDARD OF REVIEW

The Respondents agree that the matter of the entry of the default is a matter that lies solely within the sound discretion of the Trial Court. Harbor Island Owners' Association v. Preferred Island Properties, Inc., 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006). Therefore, the Circuit Court's decision will not be overturned absent a clear showing of an abuse of discretion. Richardson v. PV, Inc., 383 S.C. 610, 614, 682 S.E.2d 263, 265 (2009).

ARGUMENT

I. FAILURE TO ESTABLISH GOOD CAUSE TO SET ASIDE DEFAULT

This case involves the appeal of the January 22, 2020 Order (Order, pp. 30-34) of the Honorable Scott R. Sprouse (Circuit Court) which denies the Appellants' Motion to Set Aside the Entry of the Default Judgment (Motion to Set Aside Default Judgment, pp. 16) in this case.

The only inquiry is whether the Trial Judge exercised sound discretion in denying the Appellants' Motion. The Appellants themselves in their brief cite the necessity of the party seeking relief (the Appellants) to make a "particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party" pursuant to South Carolina Rule of Civil Procedure 60(b). A showing of any of these factors can constitute what is termed good cause to set aside the default.

Circuit Court Judge Sprouse signed the Default Order on July 1, 2019 (Order of Default and Judgment, pp.13-14), and he sat as Judge at the Motion hearing. He very specifically inquired of the Counsel representing the Appellants at the Motion hearing concerning their failure to answer. As the record shows via Affidavits (Affidavit of Richard Margolis, Affidavit of Marshall Keese, Affidavit of Florence Keese, pp. 37-41), the Appellants consulted with attorney Richard

Margolis, and conferred with him about this case and the necessity of answering. Attorney Margolis in fact told them they needed a South Carolina attorney because he had been unable to locate one to represent them. Judge Sprouse found that the Appellants knew or were accountable for the knowledge of the need to answer. Williams v. Vanvolkenburg, 312 S.C. 373, 440 S.E.2d 408, 409 (S.C. App 1994).

Since there was no good cause to set aside the Default Judgment (Order of Default and Judgment, pp. 13-14), there is no need to reach issue of a Meritorious Defense albeit the Court ruled there was none.

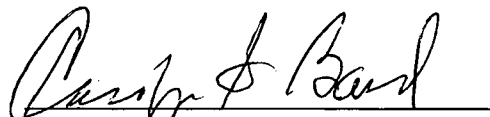
There is no inference of an abuse of discretion, much less a clear showing of same.

CONCLUSION

The Circuit Court's ruling to refuse to Set Aside the Entry of the Default Judgment (Order, pp. 30-34) was a sound exercise of his discretion. Therefore, the Circuit Court's ruling must be upheld.

November 24, 2020

Respectfully submitted,



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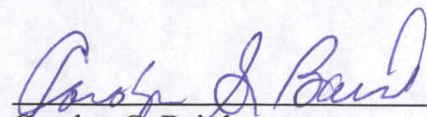
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Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Amended Final Brief complies with Rule 211(b),
SCACR.

November 24, 2020



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