

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)
)
Iraj Mazloom,)
Plaintiff,)
)
vs.)
)
Kimberly Hodge Melton,)
Michelle Diane Smart, and)
Bethany Burgess Paetow,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
ELEVENTH JUDICIAL CIRCUIT

Case No.: 2019CP3203055

ORDER GRANTING DEFENDANT KIMBERLY
HODGE MELTON'S MOTION TO SET ASIDE
ENTRY OF DEFAULT

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SC Court of Appeals

This matter comes before the Court on Defendant Kimberley Hodge Melton's Motion to Set Aside Default. A hearing on in this matter was scheduled for February 16, 2021 via WebEx due to the ongoing Covid19 Pandemic. The hearing was originally set as a Damages Hearing against Defendant Kimberley Hodge Melton, however, this Court agreed to hear Defendant Melton's motions prior to proceeding with the Damages Hearing. Present at the hearing was Amanda Pittman, Esq., together with her client Plaintiff Iraj Mazloom ("Plaintiff"); present on behalf of Defendant Melton was Monica Towle, Esq.; present on behalf of Defendant Smart was William H. Bowman III, Esq.; and present on behalf of Defendant Paetow was Elizabeth Wilkerson, Esq. Based on the arguments and memoranda of counsel, the record before this Court, and the relevant factors to be considered, this Court hereby grants Defendant Melton's Motion to Set Aside Default for the reasons set forth below.

Factual/Procedural Background

On July 31, 2019, Plaintiff initiated this action against Defendants Melton, Smart, and Paetow, as a result of a five-vehicle accident which occurred in Lexington County on January 9, 2018. Plaintiff alleges negligence against the above-named Defendants and seeks damages jointly and severally, for actual damages, punitive damages, and for the costs of this action. Defendants Paetow and Smart timely filed answers in this action. Defendant Melton was personally served on August 11, 2019, at her place of residence. Defendant Melton failed to respond or otherwise answer Plaintiff's Summons and Complaint. Plaintiff moved for an Entry of Default against Defendant Melton on October 2, 2019, which was granted by the Lexington

County Clerk of Court on June 16, 2020. On December 16, 2020, a damages hearing was scheduled to be heard as to Defendant Melton on February 16, 2021.

On February 9, 2021, Defendant Melton filed an answer to Plaintiff's complaint, a motion to set aside the entry of default, a motion to enlarge the time to answer, an affidavit from Defendant Melton, and memoranda in support of said motions. Defendant Melton seeks an order from this Court setting aside the Clerk of Court's June 16, 2020 Order, entering of default against her. Both Plaintiff and Defendant Melton filed memoranda in support and opposition to Defendant's motion to set aside default.

Analysis

Rule 55(a) of the South Carolina Rules of Civil Procedure provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. However, 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. *Sundown Operating Co., Inc. v. Intedger Industries, Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). In determining whether the "good cause" standard has been met, the court may consider the totality of the circumstances involved in the case. *Ricks v. Weinrauch*, 293 S.C. 372, 360 S.E.2d 535 (holding that good cause was shown in the totality of circumstances involving misplaced reliance on insurance agent).

Once a party has put forth a satisfactory explanation for the default, the trial court must also consider the so-called *Wham* factors: (1) the timing of the defaulting defendant's motion for relief; (2) whether the defaulting defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff should relief be granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989). A motion under Rule 55(c) is addressed to the sound discretion of the trial court. *Williams v. Stalnaker*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994). Rule 55(c) should be "liberally construed to promote justice and dispose of cases on the merits." *Bage v. Southeastern Roofing Co. of Spartanburg, Inc.*, 373 S.C. 457, 471, 646 S.E.2d 153, 160 (Ct. App. 2007).

I. Whether Defendant Melton has Made a Showing of Good Cause Sufficient to Merit Setting Aside the Default Entered Against her.

In support of her motion to set aside the entry of default, Defendant Melton filed an Affidavit with this Court on February 9, 2021. Defendant Melton's Affidavit contains sworn statements which she argues support a finding that the setting aside of her default would support the interests of justice, and therefore establish good cause to set aside the entry of default. Defendant Melton's Affidavit confirms Plaintiff's allegation that on January 9, 2018, she was involved in a multi-vehicle collision with Plaintiff. Defendant Melton, however, denies any wrongdoing or liability for the accident. Defendant Melton's Affidavit further confirms that she was properly served with notice of this litigation on August 11, 2019. Defendant Melton's justification, as contained with her Affidavit, for failing to respond to this litigation until this point is two-fold: law enforcement officers who responded to the accident informed Defendant Melton that she was not at fault for the collision, and that the accident report resulting from the incident lists Plaintiff, Defendant Smart, and Defendant Paetow as contributing to the collision but did not list Defendant Melton. Defendant Melton asserts that based on these facts, she did not believe a claim was being made against her when served with this litigation, and that she therefore believed she had no duty to respond.

While this Court does not make any factual finding with respect to the truthfulness of Defendant Melton's justifications, other than the fact that they are contained within a sworn affidavit, this Court finds that Defendant Melton has made a sufficient showing to demonstrate that vacating the default would serve the interests of justice when considered under the totality of the circumstances, as described in more detail below. The Court proceeds to consider whether vacating the entry of default against Defendant Melton is proper in consideration of the factors established in *Wham*.

II. Whether Setting Aside Defendant Melton's Default is Supported by the *Wham* Factors

A. The Timing of Defendant Melton's Motion to Set Aside Entry of Default

This Court considers the timing of Defendant Melton's Motion to Set Aside not just in terms of the date of filing of this action and the date of the motion to set aside the default was filed, but in the larger context of the posture of this litigation as a whole. Plaintiff filed this action

on July 31, 2019, while Defendant Melton did not file her Motion to Set Aside until February 9, 2020, more than eighteen months later, and more than six months after the Clerk of Court's Order entering default against Defendant Melton. Upon first glance, Defendant's Motion may appear rather untimely, however, a more holistic consideration of the timing of Defendant Melton's Motion provides a somewhat different perspective. Counsel for the parties inform the Court that this case has yet to attempt mediation, and that due to the current Covid19 Pandemic, this case is unlikely to be called for trial within the next six months. Defendant Melton informs the Court that setting aside the entry of default against Defendant Melton would not require additional time for discovery or undue delay, as counsel informs the Court that Defendant Melton would be prepared to join the other parties as the case sits today. Defendant Melton seeks to set aside the entry of default prior to any adjudications or settlement with respect to any other parties, and therefore, this Court finds that Defendant Melton's Motion to Set Aside the Entry of Default is not so untimely so as to preclude a finding of good cause in this case. Further, in light of the factual allegations in this case, the vacation of the default against Defendant Melton at this point in time would serve the interests of justice by ensuring a proper factual determination of liability amongst the multiple parties is possible. However, this Court would note that the filing of a motion to set aside an entry of default more than eighteen months after the filing of the summons and complaint, and less than ten days prior to the scheduled damages hearing would ordinarily weigh against the defaulting party in determining whether good cause has been shown.

B. Whether Defendant Melton has a Meritorious Defense

Upon considering the allegations by the Plaintiff and record of this case, including Defendant Melton's affidavit, this Court finds that there is a sufficient likelihood that Defendant Melton could raise meritorious defenses in the case to support a finding of good cause. Defendant Melton's Affidavit contends that her vehicle stopped prior to colliding with the Plaintiff's vehicle, that law enforcement on scene at the accident informed her she was not at fault, and that the accident report further found that Plaintiff, Defendant Paetow, and Defendant Smart were at fault. These, facts, taken as true, would support Defendant Melton's contention that she has a meritorious defense to Plaintiff's claims. Thus, this factor weighs in Defendant Melton's favor.

**C. Whether Plaintiff Would Be Unfairly Prejudiced Should Defendant Melton's
Default Be Set Aside**

Finally, this Court must consider whether Plaintiff would be unfairly prejudiced by the vacation of the entry of default against Defendant Melton. This Court is informed that Defendant Melton's addition to this case would not require any undue delays or prolong this litigation. The parties have yet to engage in mediation, and this case will not be called for trial within the next six months. Further, Plaintiff is not prejudiced simply by the vacation of the default against Defendant Melton, "no cognizable prejudice inheres in requiring a plaintiff to prove a defendant's liability, a burden every plaintiff assumes in every civil action filed." *Colleton Prep. v. Hoover*, 616 F.3d 413, 419 (4th Cir. 2010). This Court finds, based on the record and the posture of this case, that Plaintiff would not be unfairly prejudiced by the vacation of the defaulted entered against Defendant Melton.

Conclusion

THEREFORE, for good cause shown in accordance with Rule 55(c), SCRCP, and in consideration of the *Wham* factors, this Court finds that the Lexington County Clerk's Order entering default against Defendant Kimberley Hodge Melton should be set aside, that Defendant Melton shall be restored to active status in this litigation, and that Defendant Melton's Answer, filed on February 9th, 2021, shall be deemed a part of the record.

IT IS SO ORDERED.

February 17, 2021
Lexington, SC

Debra R. McCaslin
Circuit Court Judge



Lexington Common Pleas

Case Caption: Iraj Mazloom VS Kimberly Hodge Melton , defendant, et al
Case Number: 2019CP3203055
Type: Order/Other

So Ordered

Debra R. McCaslin

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