

**THE STATE OF SOUTH CAROLINA
IN SOUTH CAROLINA COURT OF APPEALS
APPEAL FROM LEE COUNTY**

CASE NUMBER: 2019-000361

Laura Toney

Appellant,

Vs.

United States of America, acting
through the Farmers Home
Administration, United States
Department of Agriculture

Respondents.

RECEIVED

NOV 21 2019

SC Court of Appeals

APPELLANT'S FINAL BRIEF

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9. Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607 (2009).
10. Thynes v. Lloyd, 294 S.C. 152, 153-54 (Ct. App. 1987).

South Carolina Rule 55

South Carolina Rule 55a

South Carolina Rule 11

STATEMENT OF THE CASE

The Appellant filed this case on May 30, 2017 for forgery of the Honorable Judge James' signature and other causes of actions. The Respondents were served a copy of the Complaint and failed to answer. The Appellant filed an Affidavit Of Default Judgment. Mediation was scheduled and the Respondents were given written notice of the Mediation, but failed to attend. This case set in the Lee County Court of Common Pleas for over (2) years with no action from the Court.

The South Carolina Supreme Court makes it clear that:

"All motions filed on or after September 10, 2015, be disposed of within 90 days of the date of filing, absent extraordinary circumstances. The Clerks of Court in the pilot counties shall submit reports to the Supreme Court every three months, beginning three months after the date of this Order. The report shall contain the status of all pending motions, including the number pending, the date filed, and if requested by the Chief Justice or Court Administration, the reason any motion pending over 90 days has not been decided. This Motion was filed October 17, 2016, which is pass the 90 day deadline." The Defendant discovered that the Order for Substitute of Counsel has evidence of being a forgery. The signature on the Order does not match other signatures of the Honorable George James, Jr.

The Honorable Judge McFadden dismissed the case on January 28, 2019.

STANDARD OF REVIEW

RULE 55 States:

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).

(b) Judgment. Judgment by default may be entered as follows:

(1) Cases Involving Liquidated Damages or Sum Certain Amounts. When the claim of a party seeking judgment by default is for a liquidated amount, a sum certain or a sum which can by computation be made certain, the judge, upon motion or application of the party seeking default, and upon affidavit of the amount due, shall enter judgment for that amount and costs against the party against whom judgment by default is sought, if that party has been defaulted for failure to appear and if such party is not a minor or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

(2) All Other Cases. In all other cases, the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against a minor or incompetent person unless represented in the action by a guardian ad litem who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter

judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearing or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties if a proper demand therefor has been made pursuant to Rule 38 and not withdrawn, or when and as required by any statute. Pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action.

South Carolina Rule 11 states:

(a) If the defendant does not answer the complaint within the time period specified by these rules or answers within the specified time period but fails to appear at the time set for trial, judgment may be given for the plaintiff by default if the amount of the claim is liquidated. If the claim is unliquidated, and the defendant fails to answer within the time period specified by these rules or answers within the specified time period but then fails to appear at the time set for trial, judgment may be given to the plaintiff by default as in the case of liquidated claims if (1) the plaintiff itemizes the account and attaches an affidavit that it is true and correct and that no part of the sum sued for has been paid by discount or otherwise and (2) a copy of the account and affidavit was served with the summons on the defendant. In all other cases when the defendant fails to appear or answer, the plaintiff cannot recover without proving damages.

(b) If the plaintiff does not appear at trial, or if neither the plaintiff nor the defendant appears at the time and place specified for trial, the court may enter an order dismissing the action.

(c) If the defendant has filed a counterclaim against the plaintiff and the plaintiff fails to appear at the time set for trial, judgment may be given for the defendant by default if the claim is liquidated. If the claim is unliquidated, and the plaintiff fails to appear at the time set for trial, judgment may be given to the defendant by default as in the case of liquidated demands if (1) the defendant itemizes the account and attaches an affidavit that it is true and correct and that no part of the sum sued for has been paid by discount or otherwise and (2) a copy of the account and affidavit is filed with the answer and is delivered to the plaintiff as provided for in Rule 8. In all other cases when the plaintiff fails to appear, the defendant cannot recover on a counterclaim without proving damages.

(d) If a default hearing is conducted at the time set for trial because either the plaintiff or the defendant failed to appear, no further notice need be given of the default hearing, provided both parties were properly delivered notice of the time set for trial in a manner provided for in Rule 8.

(e) For good cause shown, the court may set aside a default or a default judgment in accordance with Rule 12.

. All that is required for entry of default is that plaintiff make a showing by affidavit that a party has failed to appear, answer or otherwise defend the action. See Rule 55(a).

"[W]hether default was actually entered is of no consequence since the entry of default

is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit." *Thynes v. Lloyd*, 294 S.C. 152, 153-54 (Ct. App. 1987) (where clerk failed to enter default in the file book); see also *Stark Truss Co. v. Superior Const. Corp.*, 360 S.C. 503, 509 (Ct. App. 2004) ("entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party"). Plaintiff has complied with Rule 55 and filed the necessary affidavit.

10 It is undisputed Earth Fare failed to answer the complaint in the time period required by rule. No further action is needed. Earth Fare is in default.

ARGUMENTS

- I. **Because the Respondents failed to answer the complaint in a timely, the Appellant should be granted a Default Judgment.**

The Respondents were served with the Complaint and failed to answer.(R. pages 1-34).

The Respondents acknowledged receipt of the Complaint. (R. pages 44-45).

The Respondents were also served with Mediation schedule, but also failed to answer. (R. pages 38-43). The Defendants admitted forged documents to the court containing the forgery of Judge George James, Jr. signature. (R. pages 54-57).

According to South Carolina Rule 55:

DEFAULT

(a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).

(b) Judgment. Judgment by default may be entered as follows:

(1) Cases Involving Liquidated Damages or Sum Certain Amounts. When the claim of a party seeking judgment by default is for a liquidated amount, a sum certain or a sum which can by computation be made certain, the judge, upon motion or application of the party seeking default, and upon affidavit of the amount due, shall enter judgment for that amount and costs against the party against whom judgment by default is sought,

if that party has been defaulted for failure to appear and if such party is not a minor or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

(2) All Other Cases. In all other cases, the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against a minor or incompetent person unless represented in the action by a guardian ad litem who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearing or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties if a proper demand therefor has been made pursuant to Rule 38 and not withdrawn, or when and as required by any statute. Pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known address of such party whether or not such party has appeared in the action.

South Carolina Rule 11 states:

(a) If the defendant does not answer the complaint within the time period specified by these rules or answers within the specified time period but fails to appear at the time set for trial, judgment may be given for the plaintiff by default if the amount of the claim is

liquidated. If the claim is unliquidated, and the defendant fails to answer within the time period specified by these rules or answers within the specified time period but then fails to appear at the time set for trial, judgment may be given to the plaintiff by default as in the case of liquidated claims if (1) the plaintiff itemizes the account and attaches an affidavit that it is true and correct and that no part of the sum sued for has been paid by discount or otherwise and (2) a copy of the account and affidavit was served with the summons on the defendant. In all other cases when the defendant fails to appear or answer, the plaintiff cannot recover without proving damages.

(b) If the plaintiff does not appear at trial, or if neither the plaintiff nor the defendant appears at the time and place specified for trial, the court may enter an order dismissing the action.

(c) If the defendant has filed a counterclaim against the plaintiff and the plaintiff fails to appear at the time set for trial, judgment may be given for the defendant by default if the claim is liquidated. If the claim is unliquidated, and the plaintiff fails to appear at the time set for trial, judgment may be given to the defendant by default as in the case of liquidated demands if (1) the defendant itemizes the account and attaches an affidavit that it is true and correct and that no part of the sum sued for has been paid by discount or otherwise and (2) a copy of the account and affidavit is filed with the answer and is delivered to the plaintiff as provided for in Rule 8. In all other cases when the plaintiff fails to appear, the defendant cannot recover on a counterclaim without proving damages.

(d) If a default hearing is conducted at the time set for trial because either the plaintiff or the defendant failed to appear, no further notice need be given of the default hearing,

provided both parties were properly delivered notice of the time set for trial in a manner provided for in Rule 8.

(e) For good cause shown, the court may set aside a default or a default judgment in accordance with Rule 12.

. All that is required for entry of default is that plaintiff make a showing by affidavit that a party has failed to appear, answer or otherwise defend the action. See Rule 55(a).

"[W]hether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit." *Thynes v. Lloyd*, 294 S.C. 152, 153-54 (Ct. App. 1987) (where clerk failed to enter default in the file book); see also *Stark Truss Co. v. Superior Const. Corp.*, 360 S.C. 503, 509 (Ct. App. 2004) ("entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party"). Plaintiff has complied with Rule 55 and filed the necessary affidavit.

10 It is undisputed Earth Fare failed to answer the complaint in the time period required by rule. No further action is needed. Earth Fare is in default.

"Negligence of an insurance company is imputed to a defaulting litigant and cannot constitute good cause to relieve [the defaulting party] from the entry of default."

Richardson v. P.V., Inc., 383 S.C. 610, 618-19 (2009). "[R]ules which require responsive pleadings within a limited time serve important social goals, and a party should not be permitted to flout them with impunity." *Howell v. Haliburton*, 205 S.E.2d 617 (N.C. Ct. App. 1974)

In order to justify relief from entry of default, Earth Fare “must provide an explanation for [its] default and give reasons why vacation of the default entry would serve the interests of justice.” *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607 (2009). A satisfactory explanation for the default is the threshold inquiry. Earth Fare gives no explanation for its default other than after being served it immediately provided a copy of this lawsuit to its insurance company and believed the matter handled. An insurance company’s mishandling of a complaint “is imputed to a defaulting litigant and cannot constitute good cause to relieve [that litigant] from default.” *Richardson v. P.V., Inc.*, 383 S.C. 610, 618-19 (2009) (emphasis added); see also *Sundown*, 383 S.C. at 609 (“law is clear that an attorney or insurance company’s misconduct is imputable to the client”); *Pilgrim v. Miller*, 350 S.C. 637, 641-42 (Ct. App. 2002), reh’g denied, cert granted, vacated due to settlement (insurer’s failure to handle summons and complaint imputed to defendant and not grounds for good cause). If a party can give a satisfactory explanation for the default then the trial court can consider the Wham factors: (1) timing of the motion for relief; (2) whether the defaulting party has a meritorious defense; and (3) degree of prejudice to plaintiff if relief granted. *Sundown*, 383 S.C. at 607-08. The court is not required to make findings on the Wham factors. See Plaintiff’s Notice of Entry of Default filed Feb. 28, 2018. ELECTRONICALLY FILED - 2018 May 23 5:45 PM - GREENVILLE - COMMON PLEAS - CASE#2017CP2304362 7 factors if sufficient evidence exists that good cause for default does not exist. *Dixon v. Besco Engineering, Inc.* 320 S.C. 174, 179 (Ct. App. 1995).

II. The State Court has general jurisdiction over this case because it deals with State issues

Most **state courts** are **courts** of general jurisdiction, whereas **federal courts** have limited jurisdiction. That is, **state courts** are presumed to have power to hear virtually any **claim** arising under **federal** or **state** law, except those falling under the exclusive jurisdiction of the **federal courts**. (R. pages 46-53 Transcript of hearing), (R. Pages 58-64 Order from the Judge dismissing the case).

When a court has general jurisdiction over a resident defendant, it can hear any claim against that defendant, even if the claim originated outside the forum state. By contrast, a court can have specific jurisdiction over a non-resident defendant as long as the claims arise out of the defendant's contacts with the forum state. At issue in *Goodyear* is a claim of general jurisdiction over a U.S. company's foreign subsidiary that arises from an accident that occurred overseas involving a foreign-designed and manufactured product, while *Nicastro* involves a claim of specific jurisdiction over a British corporation that sent its products to New Jersey via an out-of-state U.S. distributor. *Goodyear Luxembourg Tires v. Brown* and *J. McIntyre Machinery Ltd. v. Nicastro*.

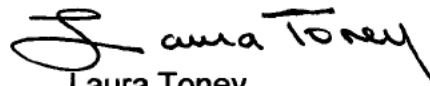
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CONCLUSION

The Respondents were served and failed to answer and defend the complaint. The Appellant is respectfully requesting that she is granted a default judgment against the Respondents. The Appellant is also requesting that the court's decision is reversed.


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