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SUPREME COURT OF ALABAMA

OCTOBER TERM, 2006-2007

1060301

TA Financial, Inc.

v.

Discover Bank

**Appeal from Jackson Circuit Court
(CV-05-10)**

WOODALL, Justice.

TA Financial, Inc. ("TA"), appeals from a default judgment against it awarding injunctive relief to Discover Bank ("Discover") in an action filed by Discover against TA and others. We reverse and remand.

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On June 14, 2006, Discover filed a motion for a default judgment against TA based solely on TA's failure to file, through counsel, an answer to Discover's complaint. The motion indicated that the trial court would consider it at a hearing on June 22. Significantly, on June 21, counsel filed an answer on behalf of TA.

The record indicates that the hearing was held on June 22. However, the record does not include a transcript of that hearing. Subsequently, the trial court granted Discover's motion and entered a judgment by default against TA for the injunctive relief sought by Discover.

TA, pursuant to Ala. R. Civ. P. 55(c), filed a motion to set aside the judgment by default. The motion was denied by operation of law pursuant to Ala. R. Civ. P. 59.1. TA then appealed to this Court.

TA argues that "the defect complained of by Discover [in its motion for a judgment by default] was rectified prior to the trial court's order granting default." TA's brief, at 30. Our review of the record confirms that TA's answer was filed before the hearing on the motion. Consequently, as Discover concedes in correspondence to this Court, "the filing of that

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answer cured the default before any default judgment was entered. Thus, the default judgment should not have been entered."

For these reasons, the default judgment against TA is reversed, and the cause is remanded for further proceedings.

REVERSED AND REMANDED.

Cobb, C.J., and See, Smith, and Parker, JJ., concur.