Third District Court of Appeal

State of Florida

Opinion filed August 26, 2020.
Not final until disposition of timely filed motion for rehearing.

No. 3D19-2404
Lower Tribunal No. 19-8383

Miguel A. Contreras and Fiorella T. Perfetto,
Appellants,

vs.

Stambul, LLC,
Appellee.

An appeal from the Circuit Court for Miami-Dade County, Barbara Areces, Judge.

Shutts & Bowen, LLP, and Patrick G. Brugger, and Dario A. Perez, for appellants.

Alvarez, Gonzalez, Menezes, LLP, and Ignacio M. Alvarez, and Carlos F. Gonzalez, for appellee.

Before LOGUE, LINDSEY, and MILLER, JJ.

MILLER, J.

Appellants, Miguel A. Contreras and Fiorella T. Perfetto, challenge the denial of their motion to vacate a clerk's default and ensuing default final judgment entered in favor of appellee, Stambul LLC. We have jurisdiction. See Fla. R. App. P. 9.130(a)(5). Finding vacatur was warranted below, we reverse.

"The true purpose of the entry of a default is to speed the cause thereby preventing a dilatory or procrastinating defendant from impeding the plaintiff in the establishment of his[, her, or its] claim." Coggin v. Barfield, 8 So. 2d 9, 11 (1942). "It is not procedure intended to furnish an advantage to the plaintiff so that a defense may be defeated or a judgment reached without the difficulty that arises from a contest by the defendant." Id.

Thus, under Florida law, "if there be any reasonable doubt in the matter [of vacating a default], it should be resolved in favor of granting the application and allowing a trial upon the merits of the case." State Bank of Eau Gallie v. Raymond, 103 Fla. 649, 656, 138 So. 40, 43 (Fla. 1931) (citation omitted). In accord with this principle, under a well-entrenched body of precedent, entry of a clerk's "default [as authorized under Florida Rule of Civil Procedure 1.500 (a)] is not appropriate in cases where the plaintiff knows that a defendant is represented by counsel who intends to assert matters in defense of the cause of action." Gulf Maint. & Supply, Inc. v. Barnett Bank of Tallahassee, 543 So. 2d 813, 816 (Fla. 1st DCA 1989); see M.W. v. SPCP Grp. V, LLC, 163 So. 3d 518, 519 (Fla. 3d DCA 2015) (finding pre-

suit contacts between counsel, including a letter and phone conversation, constituted notice that "defendant was represented by counsel and intended to defend"); Apple Premium Fin. Serv. Co. v. Teachers Ins. & Annuity Ass'n of Am., 727 So. 2d 1089, 1090 (Fla. 3d DCA 1999) ("[C]orrespondence between counsel and a presuit settlement conference between counsel and representatives of the respective clients" constituted an indication that "defendant is being represented by counsel who has expressed an intention to defend on the merits."). Indeed, even presuit communication informing "the plaintiff of the defendant's intent to contest the claim" suffices to render a later clerical default improper. Becker v. Re/Max Horizons Realty, Inc., 819 So. 2d 887, 890 (Fla. 1st DCA 2002) ("For purposes of construing the right to enter a default under rule 1.500(a), the term 'paper' is construed liberally and includes any written communication that informs the plaintiff of the defendant's intent to contest the claim.") (citation omitted); see EGF Tampa Assocs. v. Bohlen, 532 So. 2d 1318 (Fla. 2d DCA 1988) (letter requesting information about the lawsuit constituted paper); NCR Corp. v. Cannon & Wolfe Lumber Co., 501 So. 2d 157, 158 n.1 (Fla. 1st DCA 1987) (a paralegal's letter "acknowledg[ing] a telephone conversation with appellee's counsel" deemed paper under Rule 1.500); Reicheinbach v. Se. Bank, N.A., 462 So. 2d 611, 612 (Fla. 3d DCA 1985) ("We reject appellee's assertion that the letter was insufficient to require notice because it was not a responsive pleading. The rule does not limit the type of

paper to be served . . . Our holding accords with the liberal policy of Florida courts to grant motions to set aside defaults.") (citations omitted).

Here, it is axiomatic that Stambul was on notice that both Contreras and Perfetto were represented by counsel and intended to either effectuate a settlement or defend the dispute. Consequently, the clerical default was improvidently entered and the ensuing final judgment cannot stand.

Hence, "[i]n the light cast by Florida's established and salutary policy in favor of determining cases on their merits," we reverse and remand for further proceedings in conformity herewith. Wein v. Quayside Realty, Inc., 462 So. 2d 569, 569 (Fla. 3d DCA 1985) (citations omitted); see also Gables Club Marina, LLC v. Gables Condo. & Club Ass'n, Inc., 948 So. 2d 21, 24 (Fla. 3d DCA 2006) ("[A] reasonable misunderstanding between attorneys regarding settlement negotiations does constitute excusable neglect sufficient to vacate a default and that a trial court abuses its discretion by failing to vacate a default entered in such a case.") (citations omitted).

Reversed.