

Commonwealth of Kentucky

Court of Appeals

NO. 2010-CA-001979-MR

CITIZENS UNION BANK

APPELLANT

v.

APPEAL FROM OLDHAM CIRCUIT COURT
HONORABLE KAREN A. CONRAD, JUDGE
ACTION NO. 08-CI-01119

QUALITY CUSTOM CABINETS, LLC;
CARL LANCE VINCENT; CHANTEL H.
VINCENT; MORTGAGE ELECTRONIC
REGISTRATION SYSTEMS, INC., AS
NOMINEE FOR SUNTRUST MORTGAGE
COMPANY, INC.; LITTON LOAN SERVICING, L.P.,
AS SUBSTITUTE DEFENDANT FOR MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS, INC.;
AND SUNTRUST MORTGAGE COMPANY, INC.

APPELLEES

OPINION
AFFIRMING

** ** * * * * *

BEFORE: TAYLOR, CHIEF JUDGE; ACREE AND VANMETER, JUDGES.

VANMETER, JUDGE: Citizens Union Bank (“Citizens”) appeals from an order of the Oldham Circuit Court which granted Litton Loan Servicing, L.P. (“Litton”)

relief from a default judgment entered against Quality Customs Cabinets, LLC (“QCC”), et al.¹

Citizens filed the underlying foreclosure action regarding two properties described as the “First Street property” located in Oldham County and the “Hanna Road property” located in Oldham and Shelby counties. The action was filed against QCC, owners of the First Street property; Carl and Chantel Vincent, owners of the Hanna Road property; SunTrust Mortgage Company, Inc. (“SunTrust”); and Mortgage Electronic Registration Systems, Inc. (“MERS”), as nominee for SunTrust, both of which held a mortgage lien to the Hanna Road property. Citizens filed a motion for default judgment against SunTrust and MERS due to their failure to timely file responsive pleadings. The trial court entered a default judgment and ordered a sale of the properties.

Before the scheduled sale, Litton filed a motion to substitute as a defendant in the foreclosure action, claiming to be the successor in interest to MERS. Litton also sought relief from the default judgment, arguing that due to an inadvertent internal error, Citizens’ final summons and complaint were misrouted internally and were never forwarded to the legal department to be assigned to the appropriate liaison. Litton further claimed that had the complaint been routed properly, it would have been timely answered.

¹ Quality Custom Cabinets, LLC; Carl Lance Vincent; Chantel H. Vincent; Mortgage Electronic Registration Systems, Inc., as nominee for SunTrust Mortgage Company; SunTrust Mortgage Company, Inc.; and Litton Loan Servicing, L.P.

The court determined that Litton's internal error was excusable neglect, and vacated its previous order granting default judgment. The court then ordered the property to be sold, deeming Litton to have a senior lien and Citizens to have a junior lien against the property. This appeal followed.

Citizens argues the trial court abused its discretion by granting Litton relief from default judgment. Specifically, Citizens contends that (1) Litton did not provide a valid excuse for failing to answer the complaint, and (2) Citizens was prejudiced because it lost senior priority of the mortgage against the Hanna Road property. We disagree.

We review a trial court's decision to vacate an order granting default judgment for an abuse of discretion. *PNC Bank, N.A. v. Citizens Bank of N. Kentucky, Inc.*, 139 S.W.3d 527, 530 (Ky.App. 2003) (citation omitted). The test for an abuse of discretion is whether a "decision was arbitrary, unreasonable, unfair, or unsupported by sound legal principles." *Commonwealth v. English*, 993 S.W.2d 941, 945 (Ky. 1999). Default judgments are not favored, and "a trial court is vested with broad discretion when considering motions to set them aside[.]" *PNC Bank, N.A.*, 139 S.W.3d at 530 (citation omitted). Reviewing courts are less inclined to find an abuse of discretion when a trial court sets aside a judgment by default, rather than denying a motion to set aside such a judgment. *Kidd v. B. Perini & Sons, Inc.*, 313 Ky. 727, 732, 233 S.W.2d 255, 257 (1950).

CR² 55.02 provides that “[f]or good cause shown the court may set aside a judgment by default in accordance with Rule 60.02.” Under CR 60.02(a), relief from a judgment can be granted on grounds of “mistake, inadvertence, surprise or excusable neglect[.]” Additionally, this court has held that the factors to consider in deciding whether there is good cause to set aside a judgment are: “(1) valid excuse for default, (2) meritorious defense, and (3) absence of prejudice to the other party.” *Perry v. Cent. Bank & Trust Co.*, 812 S.W.2d 166, 170 (Ky.App. 1991) (citation omitted).

In *Kidd*, the court held that the trial court did not abuse its discretion by setting aside a default judgment where B. Perini and Sons alleged that due to an “inexplicable oversight, accident or mistake[.]” it failed to notify its process agent that he had been designated as such, so that he did not realize he was to file an answer to the action. *Id.* at 729, 233 S.W.2d at 255-56.³ The court noted that one could reasonably conclude the reason for failing to answer was due to an unavoidable mistake, or at the least a misunderstanding. *Id.* at 732, 233 S.W.2d at 257. Here, Litton alleged that due to a mistake, the complaint was internally misplaced and not routed to the legal department. As a result, the trial court found Litton’s failure to file a responsive pleading to be inadvertence or excusable neglect, and thus a valid excuse.

² Kentucky Rules of Civil Procedure.

³ *Kidd* was decided under the Civil Code of Practice, Section 518(7), which has effectively been replaced by CR 60.02(a).

With respect to Citizens' claim of prejudice resulting from the trial court setting aside its previous default judgment against Litton, the trial court noted that Litton was the first mortgage holder and Citizens was the second lien holder at the time the suit was filed. Thus, the trial court reasoned that allowing Litton relief from the default judgment preserved Citizens' position as second lien holder, and no prejudice resulted. KRS⁴ 382.280 governs the priority of liens, and provides that, "[a]ll bona fide deeds of trust or mortgages shall take effect in the order that they are legally acknowledged or proved and lodged for record." Here, Citizens' mortgage reflects its priority as second lien holder. Since Citizens held a junior lien interest to Litton's senior lien interest prior to the foreclosure action, we fail to appreciate Citizens' argument that it was prejudiced by the trial court's decision to grant Litton relief from the default judgment.

Finally, we must note that the trial court also made the determination that Litton had a meritorious defense to the foreclosure action prior to setting aside the default judgment. Though not contested on appeal, such a determination weighs towards granting its motion for relief. Given the broad discretion afforded courts to relieve parties from default judgments, we cannot conclude that the trial court abused its discretion by finding Litton provided a valid excuse for failing to timely file responsive pleadings and Citizens was not prejudiced by setting aside the default judgment.

The order of the Oldham Circuit Court is affirmed.

⁴ Kentucky Revised Statutes.

ACREE, JUDGE, CONCURS.

TAYLOR, CHIEF JUDGE, DISSENTS.

BRIEFS FOR APPELLANT:

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BRIEF FOR APPELLEE:

Donald K. Swartz
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