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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-325

No. COA20-374

Filed 6 July 2021

Iredell County, No. 19 CVS 1519

JMS ROOFING & SHEET METAL, INC., A North Carolina Corporation, Plaintiff,

v.

SULLIVAN SQUARE, INC., A North Carolina Corporation, Defendant.

Appeal by defendant from order entered 11 October 2019 by Judge Joseph N. Crosswhite and judgment entered 12 November 2019 by Judge Julia Gullett in Iredell County Superior Court. Heard in the Court of Appeals 23 March 2021.

Gottholm Ralston Benton Byerley & Moore, PLLC, by Matthew L. Benton, for plaintiff-appellee.

Everett Gaskins Hancock LLP, by Katherine A. King and James M. Hash, for defendant-appellant.

DIETZ, Judge.

¶ 1 Plaintiff JMS Roofing & Sheet Metal, Inc. obtained a default judgment against Defendant Sullivan Square, Inc. in this breach of contract action after Sullivan Square missed its deadline to respond to the complaint.

¶ 2 Sullivan Square moved to set aside the entry of default. The trial court denied the motion and later entered default judgment that included a monetary award under

the contract and an award of statutory attorneys' fees.

¶ 3 As explained below, Sullivan Square's reasons for missing the deadline are understandable and reasonable jurists could disagree about whether, at the trial level, there was good cause to set aside the default. But the law requires this Court to review the trial court's decision under the narrow standard of abuse of discretion and, faithfully applying that standard, we cannot say that the trial court's decision was so manifestly arbitrary that it could not have been the result of a reasoned decision. We thus reject Sullivan Square's challenge to the denial of the motion to set aside the default. But we agree with Sullivan Square that there are insufficient findings to support the award of attorneys' fees. We therefore vacate the trial court's judgment and remand for further proceedings.

Facts and Procedural History

¶ 4 Plaintiff JMS Roofing performed contracting services for Defendant Sullivan Square in January 2019. Sullivan Square allegedly failed to pay for the work, and JMS Roofing filed a claim of lien in February 2019. At the time, Sullivan Square's president, Ronny Goforth, was the registered agent for the company. Goforth lives in Virginia, but the registered address was at the North Carolina offices of an accounting firm, Mast, Evans & Isenhour LLP.

¶ 5 On 1 May 2019, JMS Roofing's counsel provided a breakdown of the unpaid bills to Sullivan Square's out-of-state counsel. JMS Roofing also told Sullivan

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Square’s counsel that the company had filed a claim of lien and outlined a “prelitigation timeline.” JMS Roofing’s counsel followed up with Sullivan Square’s counsel on 9 May 2019 and Sullivan’s Square’s counsel replied that he would “try to get you a response by next week.” JMS Roofing’s counsel again followed up on 23 May 2019 but did not receive a reply.

¶ 6 JMS Roofing filed a complaint for breach of contract in June 2019 and served Sullivan Square through the Secretary of State at the company’s registered address. An employee of Mast, Evans & Isenhour signed the return receipt on 25 July 2019 and then forwarded the complaint and summons to Goforth’s business office in Virginia. Goforth employed a secretary at the business office to receive and process mail. But, during this time, Goforth’s secretary had resigned and Goforth was undergoing cancer treatment at medical facilities in Texas and Maryland. Due to his medical needs, he was unable to promptly hire a replacement secretary.

¶ 7 On 12 August 2019, Goforth hired a new secretary. That secretary reviewed the mail, found the complaint and summons, and showed it to Goforth. He instructed her to forward a copy to his out-of-state counsel.

¶ 8 The deadline to respond to the complaint passed without a response from Sullivan Square and, on 29 August 2019, JMS Roofing moved for entry of default. The clerk of superior court entered the default that same day.

¶ 9 On 5 September 2019, JMS Roofing moved for a default judgment. An

employee of Mast, Evans & Isenhour received the motion and emailed it to Goforth. Sullivan Square then retained North Carolina counsel who immediately contacted JMS Roofing's counsel.

¶ 10 On 1 October 2019, Sullivan Square moved to set aside the entry of default. After a hearing, the trial court denied the motion. The trial court later entered a default judgment for \$42,228.24 and statutory attorneys' fees of \$6,334.25. Sullivan Square appealed.

Analysis

¶ 11 Sullivan Square challenges the trial court's denial of its motion to set aside the entry of default and the trial court's award of attorneys' fees. We address these arguments in turn below.

I. Motion to set aside entry of default

¶ 12 We first address Sullivan Square's challenge to the denial of its motion to set aside the entry of default.

¶ 13 "When default is entered due to [a party's] failure to answer, the substantive allegations raised by [the] complaint are no longer in issue, and for the purposes of entry of default and default judgment are deemed admitted." *Peebles v. Moore*, 48 N.C. App. 497, 503, 269 S.E.2d 694, 698 (1980). The North Carolina Rules of Civil Procedure provide a mechanism to move to set aside an entry of default upon a showing of good cause. N.C. Gen. Stat. § 1A-1, Rule 55(d). The trial court's ruling on

a Rule 55(d) motion is within the trial court’s sound discretion and will not be disturbed on appeal “absent a showing of abuse of that discretion.” *Coulbourn Lumber Co. v. Grizzard*, 51 N.C. App. 561, 563, 277 S.E.2d 95, 96 (1981).

¶ 14 This is an exceedingly narrow standard for an appellate court, and we can find that a trial court abused its discretion only where the trial court’s ruling is “manifestly unsupported by reason . . . [or] so arbitrary that it could not have been the result of a reasoned decision.” *Lewis v. Hope*, 224 N.C. App. 322, 323, 736 S.E.2d 214, 216 (2012). As a result of this narrow standard of review, this Court “seldom has found an abuse of discretion by the trial court in failing to set aside a default.” *Bailey v. Gooding*, 60 N.C. App. 459, 466, 299 S.E.2d 267, 271 (1983).

¶ 15 The defaulting party carries the burden of showing good cause to set aside entry of default. *Granville Med. Ctr. v. Tipton*, 160 N.C. App. 484, 487, 586 S.E.2d 791, 794 (2003). The factors this Court has identified as relevant in evaluating a showing of good cause include: “(1) was defendant diligent in pursuit of this matter; (2) did plaintiff suffer any harm by virtue of the delay; and (3) would defendant suffer a grave injustice by being unable to defend the action.” *Auto. Equip. Distribs., Inc. v. Petroleum Equip. & Serv., Inc.*, 87 N.C. App. 606, 608, 361 S.E.2d 895, 896–97 (1987).

¶ 16 Here, the evidence at the hearing before the trial court cuts both ways. There is little, if any, evidence that JMS Roofing suffered harm as a result of the delay in responding to the complaint. But JMS Roofing presented evidence that, despite some

legitimate and understandable reasons for the missed deadline, the failure to timely respond resulted in large part from lack of diligence that stemmed from inadequate corporate governance and communication at Sullivan Square. *See id.* Likewise, there was also no showing that the default imposed an injustice on Sullivan Square any different from the impact a default has on any litigant unable to defend a case on the merits. Simply put, this is precisely the sort of case where, in the exercise of judicial discretion, reasonable jurists could have conflicting views about whether Sullivan Square showed good cause.

¶ 17 In light of the record before the trial court and our limited standard of review, we hold that the trial court’s determination that Sullivan Square had not shown good cause was not so manifestly arbitrary that it could not have been the result of a reasoned decision. Accordingly, we hold that the trial court’s ruling was not an abuse of discretion.

II. Award of attorneys’ fees

¶ 18 Sullivan Square also challenges the trial court’s award of statutory attorneys’ fees as part of the judgment. The applicable statute, N.C. Gen. Stat. § 44A-35, permits reasonable attorneys’ fees to the prevailing party when the judgment is greater than fifty percent of the amount claimed, and then only “upon a finding that there was an unreasonable refusal by the losing party to fully resolve the matter which constituted the basis of the suit or the basis of the defense.” Here, the trial court made no findings

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of fact concerning the \$6,334.24 awarded for attorneys' fees. JMS Roofing concedes that, because the trial court's judgment does not contain the necessary findings, this portion of the judgment is erroneous. We agree. Accordingly, we vacate the judgment and remand to the trial court for further proceedings.

Conclusion

¶ 19 For the reasons set out above, we affirm the trial court's order denying the motion to set aside entry of default. We vacate the resulting judgment and remand for further proceedings.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.

Judges MURPHY and GORE concur.

Report per Rule 30(e).