

COURT OF APPEALS OF OHIO
EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

5500 SOUTH MARGINAL WAY, L.L.C., ET AL.,	:	
Plaintiffs-Appellants,	:	
v.	:	No. 109767
ERICK A. PARKER, ET AL.,	:	
Defendants-Appellees.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: REVERSED AND REMANDED
RELEASED AND JOURNALIZED: April 22, 2021

Civil Appeal from the Cuyahoga County Court of Common Pleas
Case No. CV-19-916379

Appearances:

Bower Stevenson, L.L.C., and Justin Stevenson, *for appellant.*

FRANK D. CELEBREZZE, JR., J.:

{¶ 1} Plaintiffs-appellants 5500 Marginal Way, L.L.C., 18419 Euclid Avenue, L.L.C., Robert F. Sprowls, and Eric Susa (collectively “appellants”) challenge the judgment of the trial court, entering default judgment against defendants-appellees Erick A. Parker and 3rd Financial Service Corporation (“appellees”), but declining

to award any damages. After a thorough review of the facts and the law, we reverse the judgment of the trial court and remand this matter for further proceedings.

I. Factual and Procedural History

{¶ 2} The following facts were alleged in appellants' complaint: Appellant Robert Sprowls ("Sprowls") owned and operated a commercial real estate building located at 5500 South Marginal Way, Cleveland, Ohio 44103 ("5500 Building"). Sprowls owned and operated 5500 South Marginal Way, L.L.C., and 18419 Euclid Avenue, L.L.C. These entities transacted business at the 5500 Building.

{¶ 3} Appellee Erick A. Parker ("Parker") owned and operated 3rd Financial Service Corporation, which originated and secured mortgages for residential borrowers. 3rd Financial Service Corporation also operated as Third Financial.

{¶ 4} Third Financial decided to open a branch office at the 5500 Building ("5500 Branch"). The 5500 Branch operated under Third Federal's NMLS license. When the 5500 Branch opened, Parker hired Susa to act as branch manager. Susa operated the 5500 Branch pursuant to appellees' direction and netted a significant amount of revenue for appellees.

{¶ 5} Appellants alleged that Third Financial was obligated to pay all expenses associated with operating the 5500 Branch. These expenses included advertising necessary to obtain client leads, employee payroll for the 5500 Branch, and commission payments to loan officers. However, Third Financial did not have the capital to fund the opening of the 5500 Branch or to cover the expenses necessary. Appellants therefore agreed to loan to Parker and Third Financial the

monies necessary by directly funding and paying for the advertising, employee payroll, and other necessary expenses. Sprowls and Susa funded these amounts themselves. Sprowls also directed 5500 Marginal Way, L.L.C. and 18419 Euclid Avenue, L.L.C. to fund certain amounts for appellees.

{¶ 6} Appellants alleged that appellees agreed to repay such amounts to appellants and further alleged that appellees agreed to provide appellants with a significant percentage of the revenue earned by Third Financial via the 5500 Branch.

{¶ 7} Third Financial also entered into a lease with 5500 South Marginal Way L.L.C., which was attached to appellants' complaint. Under the lease, Third Financial was obligated to pay \$11.76 per square foot of rentable space, or \$4,998 per month for a total of \$59,976 per year. The lease was for a term of five years, commencing on January 1, 2013. Third Financial did not make any payments under the lease.

{¶ 8} Finally, appellants collectively loaned to appellees amounts in excess of \$200,000, which appellees have not repaid or even attempted to repay. In addition, appellees have not provided appellants with the percentage of revenue earned by Third Financial.

{¶ 9} Appellants filed a complaint against appellees alleging claims of fraud, breach of contract regarding a loan, unjust enrichment, and breach of contract regarding a lease.

{¶ 10} Appellees were properly served with the complaint and failed to file an answer or otherwise defend against the claims. Appellants then moved for default

judgment, which was granted by the trial court. The entry further stated that damages would be determined at a hearing.

{¶ 11} At the subsequent damages hearing, appellants presented evidence to support the losses they suffered as a result of appellees' actions. Appellants presented the testimony of Susa and offered Exhibits A, B, C, and D, which were admitted without objection. Exhibit A was a spreadsheet of the damages evidenced by Exhibits B, C, and D. Exhibit B was a copy of the lease pages in appellants' possession and a summary of the damages incurred as a result of the breach of the lease. Exhibit C was a copy of all statements for loans closed by the 5500 Branch and a summary of the monies owed to appellants resulting therefrom. Exhibit D was a copy of all canceled checks and payment receipts in appellants' possession reflecting expenses for which appellants paid on appellees' behalf and a summary of all canceled checks.

{¶ 12} Despite having failed to answer the complaint, Parker appeared at the hearing and was permitted to cross-examine appellants' witness. Parker was offered the opportunity to present his own evidence, but declined.

{¶ 13} Following the hearing, the court entered judgment reiterating its granting of the default judgment and further finding that appellants had not presented credible evidence of damages. The court noted that while appellants' complaint alleges damages pursuant to a contract between the parties, appellants did not produce any document signed by appellees nor did they demonstrate the existence of any other agreement. Appellants' witness testified that he did not have

a lease, loan agreement, or agreement to pay expenses, and further stated that he could not find any email from appellees regarding any monetary agreement between the parties. The court ultimately found that appellants were unable to produce any credible evidence of damages precipitated by appellees' actions and that appellants failed to produce evidence sufficient to support an award of damages.

{¶ 14} Appellants then filed the instant appeal, raising two assignments of error for our review:

1. The trial court erred by incorrectly applying the Ohio Rules of Civil Procedure by refusing to accept as true the allegations in the complaint and refraining from awarding damages.
2. The court erred in not awarding damages for lack of evidence because appellant did, in fact, provide extensive documentation supporting its claim for damages.

II. Law and Discussion

{¶ 15} In their first assignment of error, appellants argue that the trial court erred by misapplying Civ.R. 8, 54, and 55 when a default judgment had already been rendered, and the court refused to award damages on any of appellants' theories of recovery.

{¶ 16} We review a trial court's decision to grant or deny a motion for default judgment for an abuse of discretion. *Fitworks Holding, L.L.C. v. Sciranko*, 8th Dist. Cuyahoga No. 90593, 2008-Ohio-4861, ¶ 4, citing *Discover Bank v. Hicks*, 4th Dist. Washington No. 06CA55, 2007-Ohio-4448.

{¶ 17} Civ.R. 55(A) provides:

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 hearings or order such references as it deems necessary and proper[.]

{¶ 18} Consequently, under Civ.R. 55(A), following an entry of default judgment, the trial court has the discretion to conduct a hearing in order to determine the measure of damages. *Skiver v. Wilson*, 2018-Ohio-3795, 119 N.E.3d 969, ¶ 15 (8th Dist.), citing *Malaco Constr. v. Jones*, 10th Dist. Franklin No. 94APE10-1466, 1995 Ohio App. LEXIS 3534, 21 (Aug. 24, 1995); *Buckeye Supply Co. v. N.E. Drilling Co.*, 24 Ohio App.3d 134, 136, 493 N.E.2d 964 (9th Dist.1985) (“It has always been within the discretion of the trial court to determine whether further evidence is required to support a claim against a defaulting defendant.”). In conducting the hearing, the trial court has broad discretion in assessing the weight and credibility of the evidence of damages. *Arendt v. Price*, 8th Dist. Cuyahoga No. 101710, 2015-Ohio-528, ¶ 16.

{¶ 19} Appellants do not dispute that it was proper for the trial court to hold a hearing to determine the amount of damages. Rather, appellants argue that the trial court erred by questioning liability when default judgment had already been rendered.

{¶ 20} Civ.R. 8(D) provides that “[a]verments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading * * * .” Consequently, when a

defendant fails to answer, the averments in a plaintiff's complaint may be taken as true; however, the trial court is not automatically required to enter default judgment. *Caryn Groedel & Assocs. Co., L.P.A. v. Crosby*, 8th Dist. Cuyahoga No. 93619, 2010-Ohio-3314, ¶ 28, citing *Mancino v. Third Fed. S. & L.*, 8th Dist. Cuyahoga No. 75063, 1999 Ohio App. LEXIS 5089 (Oct. 28, 1999). "Civ.R. 55 requires a plaintiff to establish their claim for relief to the satisfaction of the trial court." *Crosby at id.* A trial court may require a party to substantiate their claims with evidence prior to entering default judgment. *Mercury Fin. Co., L.L.C. v. Smith*, 8th Dist. Cuyahoga No. 87562, 2006-Ohio-5730, citing *X-Technology v. M.J. Technologies*, 8th Dist. Cuyahoga No. 80126, 2002-Ohio-2259.

{¶ 21} Although the trial court initially entered default judgment against appellees, the judgment was not final; consequently, the trial court was permitted to revisit its decision. *See, e.g., Crosby* (trial court initially granted default judgment, but, following a hearing, entered judgment in favor of defendants). Accordingly, at the hearing, the court was still permitted to examine the merits of appellants' claims prior to granting default judgment.

{¶ 22} In its order following the hearing, the court found that appellants had not presented sufficient evidence of damages, noting that appellants did not produce any document signed by appellees nor did they demonstrate the existence of any other agreement between the parties. It is apparent that the court was wary of awarding damages based upon appellants' breach of contract claims given

appellants' failure to produce any full writings in support of an agreement between the parties.

{¶ 23} While it appears from the final judgment entry that the court was still questioning appellees' liability with regard to claims based upon written agreements, the court ultimately granted default judgment in favor of appellants and simply declined to award damages. However, because the court appeared to focus on the lack of written agreements, it is unclear whether it examined the issue of damages with regard to appellants' fraud or unjust enrichment claims, which did not require any form of writing.

{¶ 24} Accordingly, we find that the trial court erred by appearing to decline to award damages based upon a failure to demonstrate liability on the breach of contract claims when the court still entered default judgment on appellants' claims. Appellants' first assignment of error is therefore sustained. The judgment of the trial court is reversed, and this matter is remanded to the trial court to address whether appellants are entitled to damages on their fraud and/or unjust enrichment claims and, if so, in what amount.

{¶ 25} Appellant's second assignment of error is therefore moot.

III. Conclusion

{¶ 26} The trial court erred in entering default judgment and awarding zero damages on all of appellants' claims, yet only appearing to assess appellants' evidence of damages with regard to appellants' breach of contract claims. Appellant's first assignment of error is sustained, and this matter is reversed and

remanded to the trial court for consideration of damages related to appellants' fraud and unjust enrichment claims.

{¶ 27} Judgment reversed and remanded.

It is ordered that appellants recover from appellees costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate be sent to said court to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

FRANK D. CELEBREZZE, JR., JUDGE

SEAN C. GALLAGHER, P.J., and
MARY EILEEN KILBANE, J., CONCUR