

Commonwealth of Kentucky

Court of Appeals

NO. 2006-CA-001182-MR

JP MORGAN CHASE BANK, AS TRUSTEE ON BEHALF
OF ABFS MORTGAGE LOAN TRUST 2003-1; JP
MORGAN CHASE BANK; AND INSTITUTIONAL TRUST
SERVICES

APPELLANT

v. APPEAL FROM LAUREL CIRCUIT COURT
HONORABLE RODERICK MESSER, JUDGE
ACTION NO. 06-CI-00126

HARVEY SCOTT ENGLE AND
MICHELLE ENGLE

APPELLEES

OPINION AFFIRMING

** ** * ** * ** *

BEFORE: HOWARD AND MOORE, JUDGES; GUIDUGLI,¹ SENIOR JUDGE.

MOORE, JUDGE: JP Morgan Chase Bank appeals from an order of the Laurel Circuit Court in which the trial court denied the bank's Motion to Set Aside a Default Judgment. Now, JP Morgan insists that the trial court abused its discretion when it denied the bank's motion because the bank properly demonstrated good cause for failing to answer a

¹ Senior Judge Daniel T. Guidugli sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution and KRS 21.580.

complaint filed by Harvey Scott and Michelle Engle. Because JP Morgan failed to demonstrate good cause, the trial court did not abuse its discretion; consequently, we affirm the trial court's decision not to set aside the default judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

The facts surrounding this case are simple and straightforward. The Engles purchased property located in Laurel County, Kentucky, from Perry and Debbie Dewees. The Deweeses' original mortgage was with American Business Mortgage Services, Inc., but, in 2004, the mortgage was assigned to JP Morgan Chase Bank. On June 10, 2005, the Deweeses' mortgage was paid in full; however, JP Morgan failed to release its mortgage lien on the Engles' new property within 30 days as required by Kentucky Revised Statute (KRS) 382.365(1).

Because JP Morgan had failed to release the lien, the Engles sent a letter, via Federal Express, to the bank informing it that the Deweeses' mortgage had been satisfied and requesting a release of the bank's lien. According to the Engles, their attorney spoke with one of JP Morgan's vice presidents on August 30, 2005, regarding the matter; additionally, the Engles' attorney received several e-mails from the bank's employees in August and September of 2005 regarding the matter.

Although the contact between the Engles and JP Morgan seemed to indicate that the matter would be quickly resolved, the Engles eventually filed suit, pursuant to KRS 382.365, against JP Morgan in the Laurel Circuit Court on February 1, 2006. In their complaint, the Engles sought a court order to release the mortgage lien and

requesting over \$58,000.00 in penalties, pursuant to KRS 382.365(4) and (5). Because JP Morgan's corporate headquarters were in New York, the Engles forwarded their summons and complaint to the Office of Secretary of State, pursuant to Kentucky's long arm statute, KRS 454.210, to gain service of process on the bank. On February 22, the Secretary of State's Office filed a report with the trial court reflecting that it had sent the Engles' summons and complaint to JP Morgan via certified mail. Moreover, the Secretary of State attached a return receipt to its report that clearly indicated that the bank had received the pleadings on February 13, 2006. Although the bank was properly served, it neither filed an answer nor made any entry of appearance in response to the Engles' complaint. After the bank's response time had run, the Engles moved the trial court for default judgment. On April 17, the trial court entered a default judgment in the Engles' favor, ordering the bank's mortgage lien to be released and awarding \$98,100.00 in penalties, pursuant to KRS 382.365, to the Engles.

After the trial court entered the default judgment, JP Morgan moved the trial court to set aside the judgment. In its motion before the trial court, the bank claimed that the Engles had attempted to gain service of process through the Secretary of State's Office; however, the bank claimed that, "due to unknown delays in processing," its servicing agent did not receive the summons and complaint until April 10, 2006. JP Morgan averred that it has internal procedures to deal with pleadings, such as complaints, to insure that responses are timely filed. Despite having such procedures, the bank contended that "[e]ither through excusable neglect or otherwise, [it] was unable to

provide a response prior to the time [the trial court] entered the subject [d]efault [j]udgment.” The bank assured the trial court that “[t]hese circumstances [were] unusual in [its] regular course of business, and [did] not commonly occur.” Thus, the bank reasoned that “mistake, inadvertence, surprise, or excusable neglect” caused its failure to respond but failed to state the nature of the mistake it made.

In addition to the bank's “unknown delay” argument, JP Morgan contended that it had a meritorious defense to the Engles' claim that it failed to release its mortgage lien. According to JP Morgan, its internal records showed that it contacted the Laurel County Clerk's Office in order to release the lien and, to support this proposition, the bank attached a photocopy of a check allegedly sent to the Laurel County Clerk's Office to cover any fees associated with releasing the lien. Based on these assertions, the bank reasoned that the trial court should have set aside the default judgment in order to give the bank an opportunity to present its case. In addition to the bank's “meritorious defense” argument, JP Morgan asserted that the Engles would not be prejudiced by vacating the default judgment because they had not suffered any actual damages.

After hearing JP Morgan's arguments, the trial court denied the bank's motion, holding that the bank failed to give an acceptable explanation for failing to answer the Engles' complaint and failed to raise a meritorious defense. Upon review, we agree with the circuit court's determination on this.

II. STANDARD OF REVIEW

A trial court has broad discretion regarding default judgments, and we will not disturb a default judgment unless the trial court abused its discretion. *S.R. Blanton Development, Inc. v. Investors Realty and Management*, 819 S.W.2d 727, 730 (Ky. App. 1991). For a trial court to have abused its discretion, its decision must have been arbitrary, unreasonable, unfair or unsupported by sound legal principles. *Clark v. Commonwealth*, 223 S.W.3d 90, 95 (Ky. 2007).

III. ANALYSIS

According to Kentucky Rules of Civil Procedure (CR) 55.02, if a defaulting party demonstrates *good cause*, a trial court may set aside a default judgment providing said good cause meets the requirements set forth in CR 60.02.² To show good cause and, thereby, justify vacating a default judgment, the defaulting party must (1) provide the trial court with a valid excuse for the default, (2) demonstrate a meritorious defense, and (3) show the absence of prejudice to the non-defaulting party. *Perry v. Central Bank & Trust Co.*, 812 S.W.2d 166, 170 (Ky. App. 1991) (citing 7 W. Bertelsman and K.

² CR 60.02 reads in its entirety:

On motion a court may, upon such terms as are just, relieve a party or his legal representative from its final judgment, order, or proceeding upon the following grounds: (a) mistake, inadvertence, surprise or excusable neglect; (b) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59.02; (c) perjury or falsified evidence; (d) fraud affecting the proceedings, other than perjury or falsified evidence; (e) the judgment is void, or has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (f) any other reason of an extraordinary nature justifying relief. The motion shall be made within a reasonable time, and on grounds (a), (b), and (c) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this rule does not affect the finality of a judgment or suspend its operation.

Philipps, *Kentucky Practice*, CR 55.02, comment 2 (4th ed.1984)). “*All three elements must be present to set aside a default judgment.*” *S.R. Blanton Development, Inc.*, 819 S.W.2d at 729 (emphasis added).

In JP Morgan's brief, the bank insists that it demonstrated good cause as required by CR 55.02 to justify setting aside the default judgment. To support this proposition, the bank merely reiterates the same arguments that it raised before the trial court. JP Morgan contends that unknown delays in its processing of the Engles' summons and complaint prevented its servicing agent from receiving the pleadings until April 10, 2006. Once again, the bank reiterates that it has internal procedures for processing pleadings to insure timely responses. However, the bank makes no attempt to explain its internal procedures³ nor does it attempt to explain the alleged unknown delays. However, it does believe that it adequately demonstrated excusable neglect for failing to respond to the Engles' complaint.

As previously mentioned, one of the elements a defaulting party must show to justify setting aside a default judgment is a valid excuse for the default, and while the law does not favor default judgments, the carelessness of a party does not constitute a valid excuse to justify vacating a default judgment. *Perry*, 812 S.W.2d at 170. JP Morgan's excuse is that an unknown delay in its unexplained procedures for processing legal pleadings prevented its servicing agent from timely receiving the Engles' complaint. With this argument, the bank is merely attempting to pass off its own carelessness as good cause. The trial court did not find this argument to be persuasive given the fact that

³ The bank did not attempt to explain its internal procedures to the trial court either.

the Secretary of State's Office filed the return receipt that clearly demonstrated that the bank received the Engles' complaint on February 13, 2006. Considering both the record in this case and the insufficiency of the bank's excuse, the trial court correctly determined that JP Morgan had failed to demonstrate good cause as required by CR 55.02. Thus, we conclude that the trial court did not abuse its discretion when it denied the bank's motion to set aside the default judgment.⁴

In the alternative, JP Morgan contends that we should vacate that part of the default judgment in which the trial court awarded \$98,100.00 in penalties to the Engles and remand the matter so the trial court may make a “new determination of liability and damages” because the bank insists that the Engles failed to act in good faith. To support this proposition, the bank cites *Union Planters Bank, N.A. v. Hutson*, 210 S.W.3d 163 (Ky. App. 2007), an opinion that was published by this Court nearly two months after the Laurel Circuit Court had granted default judgment to the Engles. According to the bank, our Court in *Union Planters Bank* interpreted KRS 382.365 to include a good faith requirement for any party seeking to enforce the penalties contained therein. JP Morgan insists that the Engles failed to show that they acted in good faith as required by *Union Planters Bank*; thus, reversal is required.

⁴ In addition to its “unknown delay” argument, the bank contends that it had a meritorious defense to the Engles' complaint and argues that setting aside the default judgment would not prejudice the Engles. To succeed at the trial court level, JP Morgan was required to show all three elements: (1) a valid excuse, (2) a meritorious defense, and (3) the absence of prejudice. *S.R. Blanton Development, Inc.*, 819 S.W.2d at 729. Having failed to meet the requirement of showing a valid excuse for the default, there is no need to review the remaining elements.

As JP Morgan is well aware, this present appeal comes to us by way of default judgment. Although a default judgment normally possesses all the attributes of a final judgment, it does not address the merits of a plaintiff's claim. 46 AM. JUR. 2D *Judgments* § 232 (2007). Obviously, the issue of whether or not the Engles acted in good faith goes to the merits of their claim. However, due to the nature of default judgments, the trial court did not address any of the issues regarding the merits of the Engles' claim nor was there any reason for the trial court do so.⁵ Consequently, the bank's good faith argument is not properly before this Court, and we decline to address it. Furthermore, by arguing that the Engles did not act in good faith, JP Morgan is attempting to use *Union Planters Bank* as a means to circumvent CR 55.02's good cause requirement. However, we find that JP Morgan's good faith argument is not a substitute for good cause.

Because JP Morgan failed to demonstrate good cause, the Laurel Circuit Court's denial of the bank's motion to set aside said default judgment is affirmed.

ALL CONCUR.

BRIEF FOR APPELLANT:

Trent Apple
Louisville, Kentucky

BRIEF FOR APPELLEE:

Ralph W. Hoskins
Corbin, Kentucky

⁵ As mentioned previously, *Union Planters Bank* was published after the trial court had granted default judgment. Even if *Union Planters Bank* had been published prior to the default judgment, the trial court would not have been required to address the issue of good faith because the element of a valid excuse was missing.