



Greg G. Allen, Clerk
Forsyth County, Georgia

IN THE SUPERIOR COURT OF FORSYTH COUNTY
STATE OF GEORGIA

VINAY BOSE, MOMMIES PROPERTIES)
LLC, FH PARTNERS LLC)
)
Plaintiffs,)
v.)
)
JOHN RICHARDS, CHATTAHOOCHEE)
RIVER CLUB HOMEOWNERS ASSOCIATION)
INC., JOHN DOE, JANE DOE)
)
Defendants.)
)

Civil Action No: 18CV-1887-1

DEFENDANTS' MOTION TO OPEN DEFAULT

Come now, Defendants John Richards ("Richards") and Chattahoochee River Club Homeowners Association, Inc. (the "Association") and file this their Motion to Open Default pursuant to O.C.G.A. Section 9-11-55(b). This motion is supported by the Brief filed herewith and the Affidavits of R. Clay Ratterree and Holly Humphries.

Respectfully submitted, this 8th day of January, 2019.

Ellis, Painter, Ratterree & Adams LLP



R. Clay Ratterree
Georgia Bar No. 595312
clayr@epra-law.com

Kimberly Cofer Butler
Georgia Bar No. 172950
kbutler@epra-law.com

Attorneys for Defendants John Richards and
Chattahoochee River Club Homeowners
Association, Inc.

Post Office Box 9946
Savannah, Georgia 31412
912-233-9700 (p)
912-233-2281 (f)

CERTIFICATE OF SERVICE

This is to certify that I have this day served the following counsel of record with a true and correct copy of the foregoing document(s) as indicated below:

Stuart Teague
Keisha Chambless
Teague & Chambless, LLP
110 Samaritan Drive
Suite 109
Cumming, GA 30040

Larry C. Oldham
Larry C. Oldham, P.C.
416 Pirkle Ferry Road
Suite K-500
Cumming GA 30040

Vinay Bose
3001 Wembley Ridge
Atlanta, GA 30340

- X depositing a copy in the United States Mail in a properly addressed envelope with adequate postage affixed thereto to ensure delivery;

Dated this 8th day of January, 2019.

ELLIS, PAINTER, RATTERREE & ADAMS LLP



R. CLAY RATTERREE
Georgia Bar No. 595312
clayr@epa-law.com
KIMBERLY COFER BUTLER
Georgia Bar No. 172950
kbutler@epa-law.com
Attorneys for Defendants

Post Office Box 9946
Savannah, Georgia 31412
Phone: 912-233-9700
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JOHN RICHARDS, CHATTAHOOCHEE)	
RIVER CLUB HOMEOWNERS ASSOCIATION))	
INC., JOHN DOE, JANE DOE)	
)	
Defendants.)	
)	

Civil Action No: 18CV-1887-1

BRIEF IN SUPPORT OF MOTION TO OPEN DEFAULT AND RESPONSE TO PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT WITH CITATIONS TO AUTHORITY IN SUPPORT THEREOF BY DEFENDANTS JOHN RICHARDS AND CHATTAHOOCHEE RIVER CLUB HOMEOWNERS ASSOCIATION, INC.

Come now, Defendants John Richards ("Richards") and Chattahoochee River Club Homeowners Association, Inc. (the "Association") and file this Brief in Support of their Motion to Open Default and respond to Plaintiffs' Motion for Default Judgment herein and show this Court as follows:

Facts

Plaintiffs filed the underlying Quiet Title Petition on or about October 24, 2018. Defendants were served with process on or about October 25, 2018. By agreement of counsel, the time within which Defendants were required to file an answer was extended until December 14, 2018. The Court entered an Order to that effect on November 21, 2018.

On December 14, 2018, Attorney Clay Ratterree gave Defendants' twenty nine page verified Answer to his assistant, Holly Humphries, for filing with instruction that the

Answer was to go out that day. (Ratterree Affidavit, para. 3); (Humphries Affidavit, para. 3). Upon learning that e-filing was not available for the Superior Court of Forsyth County, Georgia on Friday, December 14, 2018, Holly Humphries sent the Answer to the Clerk for filing via UPS, second day air for morning delivery. (Humphries Affidavit, para. 4). The Answer was delivered to the Clerk's Office on Tuesday, December 18, 2018 at 11:40 a.m. and filed in the same day.

Plaintiffs sat quietly until January 7, 2019, and then filed a Motion for Default Judgment after the 15 days to open default had closed. Plaintiffs have suffered no prejudice by the filing of Defendants' twenty nine page verified Answer on December 18, 2018 instead of December 14, 2018. Defendants, therefore, move the Court to open default and show further that Plaintiffs are not entitled to a default judgment in their favor.

Argument and Citation of Authority

The rule permitting opening of default is remedial in nature and should be liberally applied for default judgment is a drastic sanction that should be invoked only in extreme situations. Boynton v. State Farm Mutual Auto. Ins. Co., 207 Ga. App. 756, 756, 429 S.E.2d 304 (1993). Whenever possible, cases should be decided on their merits for default judgment is not favored in law. Id.

As the Court of Appeals explained in Bilbo v. Five Star Athlete Management, Inc., 334 Ga. App. 208, 210, 778 S.E.2d 834 (2015), "O.C.G.A. Section 9-11-55(b) authorizes a trial court, in its discretion, to open a prejudgment default at any time before final judgment on one of three grounds, so long as four conditions are met. The three grounds are providential cause, excusable neglect, and proper case. The four

required conditions are (a) a showing made under oath; (b) an offer to plead instantly; (c) an announcement of ready to proceed to trial; and (d) the setting up of a meritorious defense.” Compliance with the four conditions, including the necessity of setting up a meritorious defense, however, is a condition precedent; absent showing of a meritorious defense, a trial court has no discretion to open a default. Id. (citations omitted).

Defendants paid costs prior to filing this motion.¹ Freese II, Inc. v. Mitchell, 318 Ga. App. 662, 663, 734 S.E.2d 491 (2012) (Payment of costs is a condition precedent for opening default under O.C.G.A. Section 9-11-55(b)). Defendants have made a showing under oath regarding the circumstances of default and providing a reasonable explanation of same as required. Samadi v. Fed. Home Loan Mortg. Corp., 344 Ga. App. 111, 118, 809 S.E.2d 69 (2017) (Default may be opened under the proper case analysis where a reasonable explanation for the failure to timely file exists). Defendants filed on December 18, 2018, a twenty nine page verified Answer thus satisfying the condition precedent of an offer to plead instantly because the Answer has already been filed. That twenty nine page verified Answer requested a jury trial and that taken together with Mr. Ratterree’s affidavit that he stands ready to proceed with a trial of the matter satisfies the condition precedent of an announcement of ready to proceed to trial. La Mara X, Inc. v. Baden, 340 Ga. App. 592, 597, 798 S.E.2d 105 (2017), citing, Powell v. Eskins, 193 Ga. App. 144, 145, 387 S.E.2d 389 (1989)(attorney’s appearance demanding a trial by jury and stating that defendant ‘was ready to plead and proceed with adjudication of the case’ satisfied the condition that defendant announce ready to proceed with trial); also citing, Exxon Corp. v. Thomason, 269 Ga. 763, 504 S.E.2d 676 (1998)(additional citations omitted).

¹ (Ratterree Affidavit, para. 6).

The last requirement is that of a showing of a meritorious defense. A defendant can establish a meritorious defense by showing that if relief from default is granted, the outcome of the suit may be different from the result if default stands. Bilbo v. Five Star Athlete Management, Inc., 334 Ga. App. 208, 210, 778 S.E.2d 834 (2015). This test does not require a showing that the defendant will completely defeat the plaintiff's claim and is consistent with the strong public policy of deciding cases on their merits. Id. at 211, citing, Legacy Hills Residential Assn. v. Colonial Bank, 255 Ga. App. 144, 145-146, 564 S.E.2d 550 (2002). A meritorious defense may be shown by filing an answer in which defenses are asserted to the plaintiff's claims. La Mara X, Inc. v. Baden, 340 Ga. App. 592, 597, 798 S.E.2d 105 (2017), citing, Exxon Corp. v. Thomason, 269 Ga. 761(1), 504 S.E.2d 676 (1998). In this case, Defendants filed a twenty nine page verified Answer, raising defenses that included the affirmative defense of statute of frauds, that Plaintiffs had failed in their Petition to join one or more necessary parties, including but not limited to the prior owner(s) of 3450 Bentwood Drive, and that the Complaint failed to state a claim upon which relief may be granted. Defendants' Answer established a meritorious defense. La Mara X, Inc. 340 Ga. App. at 597.

Having first satisfied that conditions precedent under O.C.G.A. Section 9-11-55(b), Defendants hereby move the Court to open default on the grounds that this is a proper case for the Court to open default. The "proper case" ground under O.C.G.A. Section 9-11-55(b) is the broadest of the three grounds and is designed to reach out to take in every conceivable case where injustice might result if the default were not opened. Bilbo v. Five Star Athlete Management, Inc., 334 Ga. App. 208, 211, 778 S.E.2d 834 (2015), citing, Henderson v. Quadramed Corp., 260 Ga. App. 680, 682, 580

S.E.2d 542 (2003); Johnson v. American Nat. Red Cross, 253 Ga. App. 587, 590, 569 S.E.2d 242 (2002). It does require, however, a reasonable excuse or explanation for the default and a meritorious defense. Samadi v. Fed. Home Loan Mortg. Corp., 344 Ga. App. 111, 118, 809 S.E.2d 69 (2017). Defendants have proffered the affidavits of Clay Ratterree and Holly Humphries explaining the circumstances of the default. The twenty nine page verified Answer establishes a meritorious defense. La Mara X. Inc. 340 Ga. App. at 597. Defendants, therefore, respectfully submit that this is a proper case for the Court to open default and further submit that Plaintiffs' motion for default judgment should be denied as Plaintiffs have suffered no prejudice by Defendants' Answer having been filed on Tuesday rather than Friday.

Respectfully submitted, this 8th day of January, 2019.

Ellis, Painter, Ratterree & Adams LLP



R. Clay Ratterree
Georgia Bar No. 595312
clayr@epra-law.com

Kimberly Cofer Butler
Georgia Bar No. 172950
kbutler@epra-law.com

Attorneys for Defendants John Richards and
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EXHIBIT A

IN THE SUPERIOR COURT OF FORSYTH COUNTY
STATE OF GEORGIA

VINAY BOSE, MOMMIES PROPERTIES)
LLC, FH PARTNERS LLC)

Plaintiffs,)

v.)

Civil Action No: 18CV-1887-1

JOHN RICHARDS, CHATTAHOOCHEE)
RIVER CLUB HOMEOWNERS ASSOCIATION)
INC., JOHN DOE, JANE DOE)

Defendants.)

State of Georgia
County of Chatham

Affidavit of R. Clay Ratterree

Comes now R. Clay Ratterree, and, after having been duly sworn, states as follows:

1.

I am over the age of majority and am competent to make this Affidavit. The matters set forth herein are based upon my personal knowledge.

2.

I am an attorney licensed to practice in the State of Georgia and am lead counsel for the defendants in the above-styled action.

3.

On December 14, 2018, I gave my assistant, Holly Humphries, a verified Answer to be filed for the defendants in the above-styled case with the instruction that the Answer was to go out that day.

4.

It did not occur to me that e-filing may not be available for Forsyth County Superior Court on December 14, 2018.

5.

I have paid the \$217.00 per named defendant today required to file a motion to open default.

6.

I requested a jury trial in the verified Answer filed on December 18, 2018 and I stand ready to proceed with a trial of this matter.

Further Affiant Sayeth Not this 8th day of January, 2019.



R. Clay Ratterree

Sworn to and subscribed before me
this 8th day of January, 2019.



Notary Public



EXHIBIT B

IN THE SUPERIOR COURT OF FORSYTH COUNTY
STATE OF GEORGIA

VINAY BOSE, MOMMIES PROPERTIES)
LLC, FH PARTNERS LLC)

Plaintiffs,)

v.)

Civil Action No: 18CV-1887-1

JOHN RICHARDS, CHATTAHOOCHEE)
RIVER CLUB HOMEOWNERS ASSOCIATION)
INC., JOHN DOE, JANE DOE)

Defendants.)

State of Georgia
County of Chatham

Affidavit of Holly Humphries

Comes now Holly Humphries, and, after having been duly sworn, states as follows:

1.

I am over the age of majority and am competent to make this Affidavit. The matters set forth herein are based upon my personal knowledge.

2.

I am a legal assistant and I work for R. Clay Ratterree who is lead counsel for the defendants in the above-styled action.

3.

On December 14, 2018, Mr. Ratterree gave me a verified Answer to be filed for the defendants in the above-styled case with the instruction that the Answer was to go out that day.

4.

Since e-filing was not available for Forsyth County Superior Court on December 14, 2018, I sent the Answer that afternoon to the Superior Court Clerk via UPS Second Day Air for morning delivery.

Further Affiant Sayeth Not this 8th day of January, 2019.


Holly Humphries

Sworn to and subscribed before me
this 08 day of January, 2019.


Notary Public



CERTIFICATE OF SERVICE

This is to certify that I have this day served the following counsel of record with a true and correct copy of the foregoing document(s) as indicated below:

Stuart Teague
Keisha Chambless
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110 Samaritan Drive
Suite 109
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Georgia Bar No. 172950
kbutler@epa-law.com
Attorneys for Defendants

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