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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA22-973

Filed 01 August 2023

Johnston County, No. 22 CVS 1315

US ACQUISITION, LLC, Plaintiff,

v.

ANTHONY J. MOUSER and CAMILLE H. MOUSER, Defendants.

Appeal by plaintiff from order entered 8 June 2022 by Judge Thomas H. Lock in Johnston County Superior Court. Heard in the Court of Appeals 26 April 2023.

William Douglas Curtis, Samuel B. Hartzell, and James S. Livermon, III, for the Plaintiff.

David F. Mills, for the Defendants.

DILLON, Judge.

I. Background

In November 2011, Plaintiff (“US Acquisition”) and Defendants settled a lawsuit initiated by Branch Banking and Trust Company, US Acquisition’s predecessor in interest to the underlying debt. The settlement was memorialized in a document (the “Settlement Agreement”). Contemporaneously therewith, Defendants executed a Confession of Judgment, which confesses judgment against

them in the amount of \$1,013,295.83, plus interest at 10% per annum from 11 November 2011, plus costs incurred for filing the Confession of Judgment.

The Settlement Agreement provided that (1) Defendants would make timely payments to US Acquisition by 1 December 2014 and (2) if Defendants failed to make timely payments and the default was not cured within 10 days of notice of the default, the Confession of Judgment would be filed with the court by US Acquisition.

Defendants failed to make timely payments, thereby defaulting on the Settlement Agreement in 2014. US Acquisition, however, waited more than seven years to notify Defendants of the default, sending the notice in April 2022. After waiting the ten-day cure period, US Acquisition filed the Confession of Judgment.

Shortly thereafter, Defendants moved for relief from the judgment under Rule 60(b)(4) and (6). In June 2022, after a hearing on the matter, the trial court entered an order vacating the Confession of Judgment. US Acquisition timely appealed.

II. Analysis

On appeal, US Acquisition argues the trial court abused its discretion by vacating the Confession of Judgment, despite US Acquisition waiting seven years after the default to file it. We disagree.

“[A] motion for relief under Rule 60(b) is addressed to the sound discretion of the trial court, and appellate review is limited to determining whether the court abused its discretion.” *Sink v. Easter*, 288 N.C. 183, 198, 217 S.E.2d 532, 541 (1975). The trial court’s decision is “subject to reversal for abuse of discretion only upon a

showing [that the decision is] manifestly unsupported by reason” or that it is “so arbitrary that it could not have been the result of a reasoned decision.” *State v. Hennis*, 323 N.C. 279, 285, 372 S.E.2d 523, 527 (1988). Rule 60(b)(6) authorizes a trial court to “relieve a party or his legal representative from a final judgment, order, or proceeding for . . . any other reason justifying relief from the operation of the judgment.” N.C. Gen. Stat. § 1A-1, Rule 60(b)(6) (2021).

In the instant case, the settlement contract provided, in pertinent part:

The Confession of Judgment shall be held by [US Acquisition]. The Confession of Judgment shall not be filed so long as [Defendants] make each payment [required by the Contract] as and when due. If [such payment] is not received within 10 days of its due date, then [US Acquisition] may give notice of default to Defendants], and if the default is not cured within 10 days of the mailing of the notice, then [US Acquisition] may cause the Confession of Judgment to be filed in an appropriate court. . . .

If the Confession of Judgment is filed, [US Acquisition] shall thereafter appropriately credit the docketed judgment with all payments made by [Defendants].

In setting aside the judgment, the trial court determined both that extraordinary circumstances existed justifying relief from the operation of the judgment and that justice demanded relief, primarily based on US Acquisition’s seven-year delay.

Our courts have avoided bright-line definitions of what constitutes extraordinary circumstances under Rule 60(b)(6). However, the law protects against “stale demands,” for “[w]ith the passage of time, memories fade or fail altogether, witnesses die or move away, [and] evidence is lost or destroyed.” *Christenbury Eye*

US ACQUISITION, LLC V. MOUSER

Opinion of the Court

Ctr. v. Medflow, 370 N.C. 1, 5-6, 802 S.E.2d 888, 891 (2017). And a party to a contract must use reasonable diligence to minimize one's damages and protect one's interests. *Tillis v. Calvin Cotton Mills*, 251 N.C. 359, 367-68, 111 S.E.2d 606, 613 (1959).

Here, the delay by US Acquisition in filing the confessed judgment caused Defendants' debt to continue accruing interest at 10% per year. US Acquisition was unable to provide any justification for its delay.

Further, our General Statutes provide that "an action upon a contract, obligation, or liability arising out of a contract, express or implied" must be initiated *within three years of the breach*. N.C. Gen. Stat. § 1-52 (2021) (emphasis added). "In a contract action, the statute of limitations begins to run when [the] contract has been breached and [the] cause of action has accrued." *Pearce v. N.C. State Highway Patrol Vol. Pledge Comm.*, 310 N.C. 445, 448, 312 S.E.2d 421, 424 (1984). "The purpose of a statute of limitations is to afford security against stale demands." *Christenbury Eye Ctr.*, 370 N.C. at 5-6, 802 S.E.2d at 891.

In the instant case, US Acquisition waited beyond the statute of limitations imposed by N.C. Gen. Stat. § 1-52 to file the confessed judgment against Defendants based on a breach of contract that occurred more than three years after the breach.

III. Conclusion

As US Acquisition waited well over three years after Defendants' default to enforce its contract rights under the Settlement Agreement, we conclude the trial court did not err in setting aside the confessed judgment. We, therefore, affirm the

US ACQUISITION, LLC V. MOUSER

Opinion of the Court

trial court's order granting Defendants relief from that judgment.

AFFIRMED.

Judges WOOD and FLOOD concur.

Report per Rule 30(e).