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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-778

Filed 21 October 2026

Wake County, No. 24CV023345-910

REGIONS BANK, successor by merger to ASCENTUM CAPITAL, LLC, Plaintiff,

v.

CORBETT CLEARING & DEMOLITION, LLC and JEREMY KYLE CORBETT,
Defendants.

Appeal by defendants from default judgment entered 12 December 2024 by Judge Margaret P. Eagles in Wake County District Court. Heard in the Court of Appeals 27 August 2026.

Smith Debnam Narron Drake Saintsing & Myers, LLP, by Byron L. Saintsing, for plaintiff-appellee.

Buckmiller & Frost, PLLC, by Joseph Z. Frost, for defendants-appellants.

ARROWOOD, Judge.

Corbett Clearing & Demolition, LLC (“Corbett Clearing”) and Jeremy Kyle Corbett (“Corbett”) (collectively “defendants”) appeal from the trial court’s entry of default judgment in favor of Regions Bank (“plaintiff”). Defendants contend that (1) the trial court abused its discretion in entering default judgment because the Clerk

of Court's entry of default was void, (2) the underlying equipment finance agreement violates N.C.G.S. § 22B-10 and is therefore void, (3) the trial court erred in its award of damages for breach of the equipment finance agreement, and (4) the trial court erred in awarding attorneys' fees, costs, and expenses under N.C.G.S. § 6-21.2. For the following reasons, we affirm the trial court's default judgment.

I. Background

On 10 November 2022, plaintiff and defendants entered into Equipment Finance Agreement No. 2697450 ("EFA") wherein plaintiff agreed to finance one 2016 Red Rhino Jaw Crusher¹ (the "Collateral") for the benefit of Corbett Clearing, on a 60-month payment schedule at \$2,611.65 per month for a total amount of \$156,699.00. Pursuant to the EFA, defendants guaranteed "payment and performance when due of all of the obligations" under the EFA and granted a security interest to plaintiff in the Collateral. Plaintiff perfected its security interest in the Collateral by filing a UCC Financing Statement with the Secretary of State.

The EFA included the following "Default and Remedies" section:

If any one of the following occurs with respect to you or any guarantor, you will be in default: (i) you fail to pay any amount under this EFA when due, (ii) you cease doing business, admit your inability to pay your debts, or you file or have filed against you a petition under the Bankruptcy Code, (iii) you breach any obligation of yours contained in this EFA or (iv) you merge, consolidate with, or sell all or substantially all of your assets or a majority of your

¹ A jaw crusher is a piece of heavy machinery used to crush rocks and construction debris through compressive force.

ownership interests to any third party. Upon your default, we may do any of the following: (a) terminate this EFA, (b) take possession of the Collateral; you irrevocably waive any security required of us in the event we take possession of the Collateral and require you to deliver it to us at your expense to a location designated by us, (c) declare all sums due and to become due hereunder immediately due and payable, all future payments discounted at 3% as calculated by us, (d) sell, dispose of, hold, or lease the Collateral and/or (e) exercise any other right or remedy which may be available to us under applicable law. You shall reimburse us for all costs we incur in enforcing our rights including our attorneys' fees and costs of repossession, repair, storage and remarketing of the Collateral. A waiver of default will not be a waiver of any other or subsequent default.

The EFA allowed recovery of interest “on all past due amounts at the lower of 1.5% per month or the highest rate allowed by law.” The EFA “sets forth the entire understanding of the parties with respect to its subject matter and may only be amended in a writing duly executed by the party against whom enforcement is sought.” Neither party executed an amendment to the EFA.

On 18 June 2024, plaintiff sent Notice of Default and Acceleration (“Default Notice”) following Corbett Clearing’s failure to pay monthly payments as of 20 November 2023. The Default Notice accelerated the balance due, charging \$18,281.55 for past due payments, \$522.34 for late charges, and \$80,575.43 for future payments, at a 3% discounted rate, for a total of \$99,379.32. The Default Notice demanded payment within ten days, with accruing default interest of \$48.75 per day.

On 24 July 2024, plaintiff filed a complaint in Wake County District Court

claiming breach of the EFA and breach of personal guaranty. The prayer for relief sought the same recovery described in the Default Notice, as well as attorneys' fees in the amount of \$14,906.90 and costs of the action. Civil summons was issued on 24 July 2024 and the complaint was served by the Wayne County Sheriff on Corbett on 6 August 2024.² On 19 August 2024, Corbett Clearing was served an Alias and Pluries summons and the complaint, with a deadline to respond by 18 September 2024.

Defendants filed a motion to extend the deadline to answer or respond to the complaint; on 3 September 2024 the Clerk of Court entered an order extending the deadline to respond to the complaint until 5 October 2024. Defendants did not file an answer or any other responsive pleading by the deadline. Counsel for plaintiff emailed counsel for defendants on 9 October 2024 confirming the failure to file a response and asking whether defendants intended to file an answer, noting plaintiff would move for default judgment if no response was received by close of business on 10 October 2024. Defendants' counsel responded that day stating "we'll get the answer filed by tomorrow." However, defendants did not file an answer or otherwise respond to the complaint by 10 October 2024.

Plaintiff filed a motion for default judgment on 15 October 2024, and the

² The summons "Return of Service" section noted that service was effected by leaving a copy of the summons and complaint at Corbett's home in Goldsboro, and that the copies were left with Corbett's daughter.

following day the Clerk of Court entered entry of default. Plaintiff filed a certificate of service stating the entry of default was served upon defendants' counsel on 24 October 2024. On 21 November 2024, plaintiff filed and served a notice of hearing on the motion for default judgment set for 12 December 2024.

Defendants filed an answer with affirmative defenses and demand for a jury trial, as well as a motion to transfer the action to Wake County Superior Court, on 10 December 2024. On 11 December 2024, defendants filed a motion to set aside entry of default and a response in opposition to the motion for default judgment.

The trial court held a hearing on the motion for default judgment on 12 December 2024. Defendants' counsel acknowledged the email exchange and stated he "indicated that [he] would file an answer and intended to[.]" but "[i]t got lost in the shuffle with respect to various other matters that [he] was handling at the time." The court noted defendants' filings made in the preceding days but stated "[t]he only thing that's on the . . . calendar is the motion for default judgment" Defendants' counsel stated he was speaking "in response to the default judgment motion" to which the court replied, "Okay, go ahead." Defendants' counsel argued the Collateral had been repossessed and liquidated but the proceeds had not been accounted for or offset against the amount being sought, and that plaintiff had not given required notice for attorneys' fees or filed an affidavit. Defendants' counsel also argued there was no provision for 18.00% interest in the contract.

The trial court subsequently granted the motion for default judgment, ordering

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that defendants were jointly and severally liable to pay plaintiff \$99,379.32 plus 18.00% interest per annum from 18 June 2024 through the date of judgment and 8.00% interest per annum until paid in full, and \$14,906.90 for attorneys' fees, costs, and expenses. Defendants filed notice of appeal on 10 January 2025.

II. Discussion

Defendants contend the trial court abused its discretion by entering default judgment because the entry of default made by the Clerk was void. Defendants further contend the trial court erred in the default judgment because the EFA violates N.C.G.S. § 22B-10 and is therefore void. As to damages, defendants argue the trial court erred in awarding damages without considering or accounting for application of proceeds received from the liquidation, sale, and disposition of the Collateral, and in awarding attorneys' fees and court costs. Plaintiff, on the other hand, argues the appeal should be dismissed for failure to preserve any issues, that defendants lack standing to contest the validity of the EFA, and alternatively that the trial court did not err in its award of damages.

A. Preservation

We first address plaintiff's contention that the appeal should be dismissed entirely for defendants' failure to preserve any issues. Plaintiff correctly notes that the North Carolina Rules of Civil Procedure Rule 5(a1) and the Tenth Judicial District Local Rules for Civil District Court Rule 3.4 require that any brief or memorandum of law in support or opposition to any motion seeking a final

determination be served on the parties at least two days prior to a hearing on the motion. Plaintiff asserts defendants seek review of issues not presented to the trial court, and the appeal should be dismissed pursuant to North Carolina Rules of Appellate Procedure Rule 10(a)(1) for raising the issues for the first time on appeal.

Defendants filed their answer with affirmative defenses and demand for a jury trial, as well as a motion to transfer the action to Wake County Superior Court, two days before the hearing, and filed the motion to set aside entry of default and a response in opposition to the motion for default judgment one day before the hearing. Rule 5(a1) also provides that if a brief or memorandum is not served within two days before the hearing, the trial court “may continue the matter for a reasonable period to allow the responding party to prepare a response, proceed with the matter without considering the untimely served brief or memorandum, or take such other action as the ends of justice require.” N.C.G.S. § 1A-1, Rule 5(a1) (2025).

The trial court allowed defendants’ counsel to present some of the arguments set forth in their pleadings but did not specifically address or otherwise respond to the arguments prior to granting plaintiff’s motion for default judgment. We note the trial court’s statement that the only thing on the calendar for the hearing was “the motion for default judgment[,]” and finding that “no answer, motion to dismiss, or pleading has been filed by” defendants.

We agree with plaintiff that defendants’ answer, affirmative defenses, motions, and response in opposition were not timely served or filed, and that the trial court

did not consider them in entering default judgment. Although defendants' failure to timely file pleadings with the lower court limits our consideration of their arguments on appeal, it does not deprive us of jurisdiction to consider whether the entry of default judgment was proper. Thus, we deny the request to dismiss the appeal.

B. Entry of Default and Default Judgment

Rule 55 of our Rules of Civil Procedure governs default in civil cases:

(a) Entry. – When a party against whom a judgment for affirmative relief is sought has failed to plead or is otherwise subject to default judgment as provided by these rules or by statute and that fact is made to appear by affidavit, motion of attorney for the plaintiff, or otherwise, the clerk shall enter his default.

(b) Judgment. – Judgment by default may be entered as follows:

(1) By the Clerk. – When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the clerk upon request of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant has been defaulted for failure to appear and if the defendant is not an infant or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

. . . .

(2) By the Judge. –

a. In all other cases the party entitled to a judgment by default shall apply to the judge therefor; but no judgment by default shall be entered against an

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infant or incompetent person unless represented in the action by a guardian ad litem or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, that party (or, if appearing by representative, the representative) shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. If, in order to enable the judge 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 take an investigation of any other matter, the judge may conduct such hearings or order such references as the judge deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by the Constitution or by any statute of North Carolina. If the plaintiff seeks to establish paternity under Article 3 of Chapter 49 of the General Statutes and the defendant fails to appear, the judge shall enter judgment by default.

N.C.G.S. § 1A-1, Rule 55 (2025).

“Default is a two-step process requiring (i) the entry of default and (ii) the subsequent entry of a default judgment.” *West v. Marko*, 130 N.C. App. 751, 754 (1998) (citing *State Employees’ Credit Union, Inc. v. Gentry*, 75 N.C. App. 260, 264–65 (1985)). “ ‘For good cause shown the court may set aside an entry of default, and, if a judgment by default has been entered, the judge may set it aside in accordance with Rule 60(b).’ ” *Id.* (quoting N.C.G.S. § 1A-1, Rule 55(d)). “ ‘A trial court’s decision to enter a default judgment, like entry of default, is reviewable for abuse of discretion.’ ” *Bodie Island Beach Club Ass’n, Inc. v. Wray*, 215 N.C. App. 283, 290

(2011) (quoting *Lowery v. Campbell*, 185 N.C. App. 659, 665 (2007), *aff'd*, 362 N.C. 231 (2008)). To find abuse of discretion the appellant must show “the judge’s decision is ‘manifestly unsupported by reason.’” *Lowery*, 185 N.C. App. at 664–65 (quoting *Clark v. Clark*, 301 N.C. 123, 129 (1980)).

Defendants contend the Clerk lacked the authority to make entry of default because defendants had appeared through counsel by filing a motion to extend the deadline. As provided in Rule 55, the Clerk is directed to enter default when a party “has failed to plead or is otherwise subject to default judgment” Defendants are correct that the appearance of their counsel for the extension motion would prevent the Clerk from entering default *judgment*. See *N.C. Nat’l Bank v. McKee*, 63 N.C. App. 58, 60–61 (1983) (“Under G.S. 1A–1, Rule 55(b)(1) the clerk can enter a default judgment against a defendant only if the defendant has failed to appear in the matter.”); see also *Roland v. W & L Motor Lines, Inc.*, 32 N.C. App. 288, 291 (1977) (“We therefore hold that this statute is clearly intended to allow a clerk to enter default judgment against a defendant only if he has never made an appearance.”).

However, that is not the case here, as the Clerk did not enter default judgment; the trial court did. The Clerk properly made entry of default following defendants’ failure to plead. N.C.G.S. § 1A-1, Rule 55; see also *First Union Nat’l Bank v. Wilson*, 60 N.C. App. 781, 783 (1983) (holding entry of default by the Clerk was proper where defendants failed to answer in a timely fashion).

Accordingly, we reject defendants’ contentions that the entry of default was

void and that the trial court's entry of default judgment must be reversed and vacated. We further conclude that the trial court did not abuse its discretion in entering default judgment. Defendants' failure to plead prior to entry of default continued to the trial court, where "no answer . . . or pleading" had been filed by defendants in time for the hearing.

C. Defendants' Remaining Arguments

Defendants present several other arguments on appeal: (1) the trial court erred in entering default judgment because the underlying EFA violates N.C.G.S. § 22B-10; (2) the court erred in its award of damages by failing to consider and apply proceeds from liquidation; (3) plaintiff gave inadequate notice and failed to comply with N.C.G.S. § 6-21.2 and therefore could not recover attorneys' fees; and (4) plaintiff was not entitled to recover pre-judgment interest at a rate of 18.00% per annum. These arguments were first raised in defendants' affirmative defenses and response in opposition to the motion for default judgment.

"When default is entered due to defendant's failure to answer, the substantive allegations raised by plaintiff's complaint are no longer in issue, and for the purposes of entry of default and default judgment are deemed admitted." *Bell v. Martin*, 299 N.C. 715, 721 (1980) (citing *Acceptance Corp. v. Samuels*, 11 N.C. App. 504, 509 (1971)). "However, following entry of default in favor of plaintiff, defendant is entitled to a hearing where he may move to vacate such entry." *Id.* "[T]he burden is on the defendant, as the defaulting party, not to refute the allegations of plaintiff's

complaint, nor to show the existence of factual issues as in summary judgment, but to show good cause why he should be allowed to file answer to plaintiff's complaint." *Id.* (citation omitted). "In the absence of a sufficient showing of excusable neglect, the question of a meritorious defense becomes moot and is immaterial." *Est. of Teel by Naddeo v. Darby*, 129 N.C. App. 604, 611 (1998) (declining to address defendant's arguments where excusable neglect was not shown).

We first note that plaintiff's complaint gave sufficient statutory notice to recover attorneys' fees and requested a sum certain. Further, the default terms of the EFA provide for interest payments in the amount of "1.5% per month[.]" or 18.00% per annum.

Defendants did not file any pleadings, or anything at all other than the motion for extension, until 10 December 2024. The trial court's findings in the default judgment make clear that the untimely filings were not before the court or considered in the court's decision to enter default judgment. Defendants' arguments on appeal are not directed at showing good cause for why entry of default judgment should be set aside but are instead an attempt to revive arguments that were not timely presented to the trial court. Accordingly, we decline to address the merits of defendants' remaining unpreserved arguments.

III. Conclusion

For the foregoing reasons, we affirm the trial court's entry of default judgment.

AFFIRMED.

REGIONS BANK V. CORBETT CLEARING & DEMOLITION, LLC

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Judges GORE and FLOOD concur.

Report per Rule 30(e).