REVERSED and REMANDED and Opinion Filed May 9, 2025

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-24-00311-CV

DEAL FINDER, LLC, Appellant
V.
JUAN CARLOS CRUZ, Appellee

On Appeal from the 44th Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-23-13412

MEMORANDUM OPINION

Before Justices Smith, Kennedy, and Lewis
Opinion by Justice Smith

Appellant Deal Finder, LLC appeals from the trial court's no-answer default judgment granted against it. For the reasons discussed below, we reverse and remand this case for further proceedings consistent with this opinion.

Factual and Procedural Background

Appellee Juan Carlos Cruz sold his business, Deal Finder, LLC, to Steve Liang on June 30, 2021. To facilitate the transaction, Cruz and Liang executed a promissory note whereby Liang, through Deal Finder, would pay Cruz $142,920 plus 12% per annum interest. The promissory note provided the interest was to be

paid first, in monthly installments, over a period of twenty-four months. The principal and any remaining interest were due on or before July 15, 2023.

According to Cruz, Deal Finder failed to pay the principal amount due by July 15, 2023, even after numerous demands by Cruz. As a result, Cruz filed suit against Deal Finder on August 31, 2023, alleging causes of action for suit on sworn account, breach of contract, unjust enrichment, and quantum meruit. Liang, Deal Finder's sole managing member and registered agent, filed an answer October 6, 2023, generally denying the claim.

Status conferences were noticed for October 20, 2023, and December 8, 2023. The docket sheet indicates the trial court also held a scheduling conference on November 10, 2023, but no scheduling order was entered.

In his December 11, 2023 motion for default judgment, Cruz asserted the trial court admonished Deal Finder at the November 10 hearing regarding Liang's inability to represent Deal Finder pro se and informed Liang that Deal Finder must engage an attorney to represent it at the hearing reset for December 8. Cruz further asserted that Liang appeared at the December 8 hearing again without counsel and asserted that the trial court granted Cruz's oral motion to strike Deal Finder's answer filed by Liang on October 6.[1] Cruz therefore argued he was entitled to a default judgment awarding him actual damages and attorney's fees because Deal Finder had

[1] The record before us does not contain a transcript of the December 8 hearing or any other hearing, and a written order to strike the October 6 answer does not appear in the record until the December 15 default judgment.

not filed a proper answer and Deal Finder breached the contract by failing to pay the promissory note on or before July 15, 2023.

At some point after the December 8, 2023 hearing, Deal Finder secured legal counsel and filed an unverified answer on December 13, 2023. Deal Finder again generally denied the allegations asserted by Cruz and pleaded several affirmative defenses. The next day, Cruz filed an amended motion for default judgment arguing that the newly filed December 13, 2023 answer was fatally defective because it was not verified, which was necessary to dispute Cruz's claim for suit on a sworn account. On December 15, 2023, Deal Finder's attorney filed a first amended answer, which was verified and specifically denied the allegations of the sworn account. Deal Finder also asserted that Texas case law excludes suits on promissory notes from the definition of a sworn account.

On that same day—December 15, 2023, the trial court entered a default judgment in which the court ordered Deal Finder's October 6, 2023 answer to be stricken; found the deadline for Deal Finder to file an answer was October 9; found Deal Finder's December 13, 2023 answer violated Texas Rules of Civil Procedure 93 and 185; found that Deal Finder failed to answer the suit, did not file a proper answer under Texas law, had no answer on file, and had wholly defaulted; found all facts necessary to award judgment; and granted default judgment against Deal Finder for $142,920, plus interest, attorney's fees, and contingent post-judgment and

appellate attorney's fees. The motion for default judgment was decided on submission; no hearing or trial was held.[2]

Deal Finder filed a motion to reconsider and vacate the default judgment on January 2, 2024. After a hearing, the trial court denied Deal Finder's motion to reconsider on January 30, 2024. Deal Finder filed its notice of appeal on March 13, 2024.

Jurisdiction

In his response to Deal Finder's appeal of the default judgment against it, Cruz first argues Deal Finder's notice of appeal was untimely because its motion to reconsider was not a proper motion under rule 26.1 and it failed to pay the filing fee; thus, the motion did not extend the trial court's plenary power or Deal Finder's time to file notice of appeal. Because Deal Finder's notice of appeal was untimely, Cruz contends this appeal should be dismissed. We disagree.

Generally, a notice of appeal must be filed within thirty days after a final judgment is signed. TEX. R. APP. P. 26.1. Such time period is extended to ninety days when the party timely files a motion for new trial, a motion to modify the judgment, a motion to reinstate a case that has been dismissed for want of prosecution under Texas Rule of Civil Procedure 165a, or a request for findings of fact and conclusions of law if required or if could properly be considered on appeal.

[2] The trial court's docket sheet indicates the amended motion for default judgment was set for submission on December 27, 2023, but it was cancelled with a notation that the case was closed.

TEX. R. APP. P. 26.1(a). A motion for new trial is timely filed if it is filed within thirty days of the judgment. TEX. R. CIV. P. 329b(a).

Cruz argues Deal Finder's motion to reconsider and vacate the default judgment, which was filed January 2, 2024, and thus within thirty days of the December 15, 2023 default judgment, was not a motion for new trial contemplated by appellate rule 26.1 because it was not titled a motion for new trial and did not contain the elements required for granting a new trial after awarding a default judgment as set out in *Craddock v. Sunshine Bus Lines, Inc.*, 133 S.W.2d 124 (Tex. 1939). Cruz also argues the motion was not a proper motion to reinstate under rule 165a because it was not verified.

As discussed in more detail below, rule 165a is not applicable to this case as it was not dismissed for want of jurisdiction. *See* TEX. R. CIV. P. 165a. Therefore, Cruz's argument that Deal Finder's motion was not a proper motion to reinstate is misplaced.

Cruz's argument that Deal Finder's motion was improper because it did not address the *Craddock* elements is also misplaced. The *Craddock* elements must be established by a defendant who has failed to answer or has failed to appear. *See Dolgencorp of Tex., Inc. v. Lerma*, 288 S.W.3d 922, 925–26 (Tex. 2009) (per curiam). This is evident by the first element, which requires the defendant to establish that its failure to answer or appear was not intentional or the result of conscious indifference but was due to an accident or mistake. *Craddock*, 133 S.W.2d

at 126. Deal Finder does not contend it did not answer due to an accident or mistake; Deal Finder contends it did answer, but the trial court erroneously disregarded its answer. Thus, the *Craddock* elements are inapplicable to this case, and Deal Finder did not need to establish such elements or present any new evidence in its motion to argue its position that the trial court erroneously disregarded its answers on file.

Furthermore, "[w]hen a party files a motion for reconsideration that seeks reversal or modification of a judgment, we treat it as a motion for new trial or to modify the judgment for purposes of the appellate deadlines." *Sprowl v. Stiles*, No. 05-18-01058-CV, 2019 WL 3543581, at *3 (Tex. App.—Dallas Aug. 5, 2019, no pet.) (mem. op.); *see also Smith v. City of Garland*, 523 S.W.3d 234, 240 (Tex. App.—Dallas 2017, no pet.) ("Any post-judgment motion, which, if granted, would result in a substantive change in the judgment as entered extends the time for perfecting the appeal."). "The filing of a motion for new trial in order to extend the appellate timetable is a matter of right, whether or not there is any sound or reasonable basis for the conclusion that a further motion is necessary." *Old Republic Ins. Co. v. Scott*, 846 S.W.2d 832, 833 (Tex. 1993) (per curiam); *see also Smith*, 523 S.W.3d at 240 ("Motions for new trial may be filed for the sole purpose of extending the appellate timetable.").

Additionally, the payment of fees is not required to extend the timetable to file a notice of appeal. *Garza v. Garcia*, 137 S.W.3d 36, 38 (Tex. 2004). And, as Deal Finder argues, the docket sheet shows that Deal Finder was charged $30 the

same day it filed its motion to reconsider. Therefore, we conclude Deal Finder filed a motion sufficient to extend the deadline under rule 26.1.

Having filed a motion that extended the notice of appeal deadline, Deal Finder's notice of appeal was due ninety days from the date of judgment. TEX. R. APP. P. 26.1(a)(1). Ninety days from December 15, 2023, was March 14, 2024. Therefore, Deal Finder's March 13, 2024 notice of appeal was timely, and this Court has jurisdiction over this appeal.

Default Judgments

On appeal, Deal Finder argues that it was reversible error for the trial court to grant a default judgment after an answer had been filed even if the answer was defective. Cruz responds that the trial court had authority to strike Deal Finder's October 6 answer and render default judgment under rule 165a because the conduct of Deal Finder's representative was "illegal and in willful disobedience of the Court's instructions." Cruz refers to the default judgment granted in this case as one for failing to diligently prosecute and repeatedly contends that this is not just a no-answer default case.

Rule 165a is titled, "Dismissal for Want of Prosecution," and grants the trial court authority to dismiss a case if any party seeking affirmative relief fails to appear for a hearing or trial of which the party had notice. TEX. R. CIV. P. 165a(1). The trial court also has the inherent power to dismiss a case when the plaintiff fails to prosecute his case with due diligence. *Villarreal v. San Antonio Truck & Equip.*,

994 S.W.2d 628, 630 (Tex. 1999). Neither provides authority for the trial court to enter a default judgment against a defendant and are simply inapplicable to the case at hand. Deal Finder is not the plaintiff here and, thus, it was not Deal Finder's case to prosecute. Moreover, the trial court did not dismiss the case; it entered judgment against Deal Finder and in favor of Cruz. The default judgment here can also not be considered a post-answer default judgment, as Deal Finder was not given notice of any trial setting, nor did the trial court conduct a trial in which Deal Finder failed to appear. *See* TEX. R. CIV. P. 245 (requiring forty-five days' notice for trial); *Dolgencorp,* 288 S.W.3d at 925 ("post-answer default judgment occurs when a defendant who has answered fails to appear for trial"). In our view, there is no doubt the trial court's default judgment in this case was based on its belief that Deal Finder failed to answer or failed to file a proper answer.

A plaintiff may seek a no-answer default judgment after the defendant's time to file an answer has expired and after the citation and proof of service have been on file with the clerk for at least ten days, exclusive of the day of filing and the day of judgment. TEX. R. CIV. P. 107(h), 239. However, it is well settled that granting a default judgment when there is an answer on file is error. *See Davis v. Jefferies*, 764 S.W.2d 559, 560 (Tex. 1989) (per curiam); *Corsicana Ready Mix v. Trinity Metroplex Div., Gen., Portland, Inc.*, 559 S.W.2d 423, 424 (Tex. App.—Dallas 1977, no writ). This is true even when the deadline to file an answer has passed or even when the trial court is unaware that an answer has been filed. *See, e.g.*, *Davis*,

764 S.W.2d at 560 (concluding trial court erred in granting default judgment when defendant filed an untimely answer two hours and twenty minutes before the trial court granted default judgment). This is also true when the answer on file is arguably defective. *See, e.g.*, *Tunad Enters., Inc. v. Palma*, No. 05-17-00208-CV, 2018 WL 3134891, at *5 (Tex. App.—Dallas June 27, 2018, no pet.) (mem. op.) (answer filed by non-attorney on behalf of corporate defendant); *Owens v. Sumola Invs., Inc.*, No. 05-07-01455-CV, 2008 WL 4868353, at *1 (Tex. App.—Dallas Nov. 12, 2008, no pet.) (mem. op.) (answer not verified).

Here, there were at least two answers on file, if not three, when the trial court considered and granted Cruz's motion for default judgment: (1) the October 6 answer filed by Liang on behalf of Deal Finder, (2) the December 13 unverified answer filed by counsel representing Deal Finder, and (3) the December 15 verified amended answer filed by counsel. Although the parties state it is not clear whether the December 15 verified amended answer was on file before the trial court granted the default judgment, we note it is time stamped 11:01 am and is listed before the default judgment entry on the docket sheet.

Even if we were to disregard the December 15 answer as being on file before the trial court entered a default judgment against Deal Finder, Cruz's argument that the other two answers were of no effect because they were defective is without merit. As to the October 6 answer being filed by Liang, a non-attorney, this Court has explained "a non-attorney's answer on behalf of a corporation is a 'curable defect'

and does not make the answer ineffective. Although the answer is defective, it is sufficient to prevent the trial court from granting a no-answer default judgment against the corporate defendant." *Tunad Enters.*, 2018 WL 3134891, at *5 (internal citation omitted); *see also Empowerment Homes, LLC v. Aleman,* No. 05-22-01082-CV, 2023 WL 6547898, at *2 (Tex. App.—Dallas Oct. 9, 2023, no pet.) (mem. op.) ("Appellate courts have 'gone to great lengths to excuse defects in answers to prevent the entry of default judgments against parties who have made some attempt, albeit deficient, unconventional, or flat out forbidden under the Rules of Civil Procedure, to acknowledge that they have received notice of the lawsuit pending against them.") (quoting *Milligan v. Mayhew*, No. 05-22-00675-CV, 2023 WL 4540274, at *2 (Tex. App.—Dallas July 14, 2023, no pet.) (mem. op.)). Furthermore, even if we were to also disregard the October 6 answer because the trial court struck it when granting the default judgment, the December 13 answer remains. *Cf. Bos v. Smith*, 556 S.W.3d 293, 307 (Tex. 2018) (stating, "A stricken claim is considered unpleaded," where father added part of his defamation claim after the pleading deadline).

Turning to the December 13 unverified answer, we first note that Deal Finder does not concede Cruz properly filed suit on a sworn account making it necessary for Deal Finder's answer to be verified. For purposes of this appeal, it is not necessary for us to determine whether Cruz properly alleged a claim for suit on a sworn account or whether Deal Finder was required to file a verified answer in order

to deny the claim. *See* TEX. R. CIV. P. 93(10) (denial of account must be verified), 185 ("Suit on Account"). Regardless, Deal Finder's answer was sufficient to prevent the trial court from entering a no-answer default judgment against it. *See Owens*, 2008 WL 4868353, at *1 (concluding there was no merit to plaintiff's claim that an unverified answer to a suit on sworn account entitled plaintiff to a no-answer default judgment); *Traditions Oil & Gas, LLC v. Comac Well Serv., Inc.*, No. 07-17-00374-CV, 2019 WL 1246839, at *3 (Tex. App.—Amarillo Mar. 18, 2019, no pet.) (mem. op.) ("Even if [plaintiff]'s pleading could be construed as a valid suit on sworn account, an issue we do not reach, [defendant]'s filing of a general, unsworn denial still renders the entry of a default judgment inappropriate."); *Jackson v. Textron Fin. Corp.*, No. 14-07-01011-CV, 2009 WL 997484, *4 (Tex. App.—Houston [14th Dist.] Apr. 14, 2009, no pet.) (mem. op.) (A "live answer defeats a motion for no-answer default judgment regardless of whether the answer was verified."); *see also Smith v. Lippmann*, 826 S.W.2d 137, 137–38 (Tex. 1992) (per curiam) (concluding that a defendant, who timely filed a pro se answer by a signed letter that stated he received and signed for citation for the case, identified the parties and the case, and provided his current address, "ha[d] sufficiently appeared by answer and deserve[d] notice of any subsequent proceedings in the case" even when the letter lacked a denial or any other defense of the claim alleged against him).

We conclude the trial court erred by granting Cruz's motion for default judgment when Deal Finder answered the suit before the no-answer default judgment was granted. Deal Finder's sole issue on appeal is sustained.

Conclusion

We reverse the trial court's December 15, 2023 Default Judgment Against Defendant Deal Finder, LLC and remand this case to the trial court for further proceedings consistent with this opinion.

/Craig Smith/
CRAIG SMITH
JUSTICE

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

DEAL FINDER, LLC, Appellant	On Appeal from the 44th Judicial District Court, Dallas County, Texas
No. 05-24-00311-CV V.	Trial Court Cause No. DC-23-13412. Opinion delivered by Justice Smith.
JUAN CARLOS CRUZ, Appellee	Justices Kennedy and Lewis participating.

In accordance with this Court's opinion of this date, the trial court's December 15, 2023 Default Judgment Against Defendant Deal Finder, LLC is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings consistent with this opinion.

It is **ORDERED** that appellant DEAL FINDER, LLC recover its costs of this appeal from appellee JUAN CARLOS CRUZ.

Judgment entered this 9th day of May 2025.