The Limitations On Defendants During A Default Judgment Damages Hearing

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A default judgment has serious repercussions. In South Carolina, a party that has been served with the complaint (the defendant) has 30 days to file an answer. There are certain rules that have to be followed with respect to the contents of that answer. A defendant can also request an extension of time to answer. Regardless of when the deadline is, failing to answer the complaint can have significant consequences.

If the defendant ignores the complaint or otherwise fails to answer it on time, the plaintiff can move for entry of default under Rule 55 of the South Carolina Rules of Civil Procedure. Default means the plaintiff wins the substance of the lawsuit, and therefore prevails on his or her claims by operation of law. It effectively cuts off the right of the defendant to file an answer or otherwise contest the allegations made by the plaintiff. It is worth noting that there are some limited circumstances, largely up to the trial court's discretion, in which the defendant can have the default set aside.

Following entry of default, the court is empowered to enter a default judgment. Whereas entry of default officially cuts off the defendant from contesting the allegations of the complaint, the default judgment is what will quantify the damages the defendant will be ordered to pay the plaintiff. Defendants against whom default has been entered may be surprised to learn how severely limited they are in what they can do during that hearing, giving the plaintiff a considerable advantage. There are generally two types of damages the plaintiff can demand: liquidated and unliquidated. Liquidated damages can be thought of as damages that are fairly easy to compute, and upon affidavit the judge or clerk can enter the default judgment in the amount demanded.

For damages that are more difficult to calculate (unliquidated), the court will need to conduct a hearing or submit the matter to a jury trial. The only purpose of this hearing or trial is to determine the amount of money the defendant will owe the plaintiff. At the hearing, the defendant has no right to present any evidence related to the amount of damages claimed by the plaintiff. The defendant can only object to plaintiff's evidence or cross-examine witnesses the plaintiff puts on the stand to testify about the amount of damages.

Additionally, the defendant cannot conduct any discovery related to the damages. Discovery is the formal process by which parties acquire relevant information from each other. Although the defendant can still cross-examine any of the plaintiff's witnesses about damages, it will not

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have access to discovery that might help it do so.

Limitations like these should be a serious consideration for anyone who has been served with a complaint. It should also inform the plaintiff of how important it is to secure the entry of default as soon as the deadline to file an answer passes. Whether you are a party in litigation in which the defendant did not answer the complaint in time, or if you are defendant in default, call us at Rosen Hagood to find out your legal options. We're ready to get to work for you.

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