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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA09-391

LAS COLINAS INTERNATIONAL, INC. and FORMOSA FOODS APPELLANTS V. CROSSWOOD ASSOCIATES, INC. APPELLEE	**Opinion Delivered** December 2, 2009 APPEAL FROM THE WASHINGTON COUNTY CIRCUIT COURT [No. CV-08-3477] HONORABLE KIM M. SMITH, JUDGE AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Las Colinas International, Inc. (d/b/a Formosa Foods), appeals from a default judgment entered in favor of appellee Crosswood Associates, Inc., in the amount of $14,586, plus costs, attorney's fees, and prejudgment interest. Formosa claims that because there was insufficient service of process, the trial court lacked jurisdiction to enter the default judgment in favor of Crosswood. Alternatively, Formosa argues that the trial court erred in its grant of default judgment because a timely answer *was* filed. Additionally, Formosa alleges that the trial court erroneously refused to grant its demand for a jury trial on the damages associated with the claim. After a careful review of the record, we see no merit in the allegations of error and affirm the order of the trial court.

The facts of this case are not in dispute. On September 17, 2008, Crosswood filed an action against Formosa alleging that this Texas-based corporation owed Crosswood $14,586 in

unpaid invoices. On that same day, Crosswood mailed a clerk-issued summons and a file-marked complaint to Formosa's registered agent, Samuel Tidwell. Mr. Steve Kuehler signed for and accepted that package on September 19, 2008. Due to concerns about the sufficiency of service, Crosswood obtained another summons from the clerk on September 26, 2008, and mailed that summons and another file-marked copy of the complaint to Mao Chang, President of Formosa Foods. An unknown person signed for and accepted that package on October 10, 2008. Again, due to concerns about the sufficiency of service, Crosswood obtained yet another summons from the clerk on November 10, 2008. President Chang was personally served with the third summons and a file-marked copy of the complaint on November 21, 2008.

On October 29, 2008, Mao Chang, identified as the President of Formosa Foods, filed a letter with the court's clerk responding to the complaint. In the letter, Chang informed the court that the debt had been satisfied. Chang enclosed a copy of the check and stated that the debt was "settled and agreed." On December 9, 2008, Chang filed a second letter with the Washington County Circuit Clerk reiterating his defense of accord and satisfaction.

On December 30, 2008, Crosswood filed a motion for default judgment stating that Formosa had been served with the complaint on November 21, 2008, and had not filed an answer or another form of responsive pleading permitted by Arkansas law. On January 6, 2009, the trial court's case coordinator sent a letter informing Formosa that "under Arkansas law a corporation must be represented by a licensed attorney." On January 22, 2009, Formosa filed an "amended answer" to Crosswood's complaint through an Arkansas-licensed attorney.

On January 23, 2009, the trial court held a hearing on the default-judgment motion. After

hearing argument from both sides, the court concluded that Formosa (1) failed to file a responsive pleading and (2) the person who signed the letters filed with the court was not an attorney licensed to practice law in Arkansas. The trial court then heard evidence as to damages and entered default judgment against Formosa in the amount of $14,586 plus attorney's fees, and pre- and post-judgment interest. Formosa filed this timely appeal.

When reviewing a trial court's decision to grant a default judgment pursuant to Ark. R. Civ. P. 55(1), we apply an abuse-of-discretion standard. *Layman v. Bone*, 333 Ark. 121, 127, 967 S.W.2d 561, 565 (1998). Additionally, Ark. R. Civ. P. 55(a) provides that when a party against whom a judgment is sought fails to plead or otherwise defend as provided by the Rules of Civil Procedure judgment by default may be entered by the court. An objection to the entry of a default judgment is regarded as a motion to set aside a default judgment. *B & F Eng'g, Inc. v. Cotroneo*, 309 Ark. 175, 178, 830 S.W.2d 835, 837 (1992). Thus, the standard in determining whether a default judgment should be entered is the same as determining whether a default judgment should be set aside under Rule 55, including the requirement that a meritorious defense be demonstrated. *Layman*, 333 Ark. at 126–27, 967 S.W.2d at 564 (1998).

Here, the record shows that Formosa failed to respond to Crosswood's complaint in a manner allowed by Arkansas law. First, as the trial court correctly found, the letters sent by Chang on behalf of the corporation did not comply with the requirements of Ark. R. Civ. P. 8(b) and did not qualify as any type of responsive motion authorized by Ark. R. Civ. P. 12. However, assuming *arguendo* that the letters did constitute an authorized answer, the answers were nullities.

Under Arkansas law, a corporation cannot appear in circuit courts pro se.[1] Thus, because Chang is not a licensed attorney, to the extent his letters could be considered pleadings, answers, or some other form of recognizable responses to the complaint, they are nullities.

The filing of an answer to a complaint constitutes the practice of law; it is illegal to practice law in Arkansas without a license; and any steps taken in litigation by a person not authorized to practice law are to be disregarded. *All City Glass and Mirror, Inc. v. McGraw Hill Info. Sys. Co.*, 295 Ark. 520, 521, 750 S.W.2d 395, 395–96 (1988). Furthermore, an amended pleading cannot relate back to earlier pleadings filed by non-lawyers. *Smithco Inv. of W. Memphis, Inc. v. Morgan Keegan & Co.*, 370 Ark. 477, 478, 261 S.W.3d 454, 455 (2007) (holding that a notice of appeal signed only by the corporation's non-attorney CEO was a nullity). Our supreme court has specifically held that an amended complaint cannot relate back to an initial complaint that was signed by a person not licensed to practice law in our state. *Preston v. Univ. of Ark. Med. Sci.*, 354 Ark. 666, 678, 128 S.W.3d 430, 437 (2003). As the court noted, there can be no relation back to a pleading that never existed because a nonexistent pleading cannot be corrected. *Id.*, 128 S.W.3d at 437.

In this case, Formosa filed an amended answer on January 22, 2009, that was signed by a licensed attorney. However, its deadline to respond to Crosswood's complaint expired thirty days after November 21, 2008 (approximately one month prior to its January response).

[1]Contrary to Formosa's claim otherwise, this concept is not unique to Arkansas. A longstanding and widely followed rule prohibits corporations from being represented by non-attorneys, consistent with the existence of a corporation as an entity that is separate and distinct from its officers and employees. *See* Jonathan R. Macey, *Macey on Corporation Laws* § 4.02[D](b) (Supp. 2000).

Formosa argues that its amended answer was timely because it related back to either of the dates the clerk received Chang's letters (October 29, 2008, or December 12, 2008). However, this argument fails because the letters from Chang are (at best) nullities and must be treated as if they never existed; as such, the amended pleading is also a nullity. Therefore, the only remaining issue is whether the trial court abused its discretion by finding that Formosa's failure to file a timely answer was not the result of mistake, inadvertence, surprise, excusable neglect, or other just cause to excuse a late filing under Ark. R. Civ. P. 55(c).[2]

In *Arnold & Arnold v. Williams*, 315 Ark. 632, 638, 870 S.W.2d 365, 368 (1994), appellant asserted a misunderstanding of the law as grounds for escaping a default judgment—just as Formosa is doing in this case. The court rejected the argument based on its recognition that "if merely declaring ignorance of the rules and procedures were enough to excuse lack of compliance, it would be just as well to have no rules [because] an appellant could simply bypass the rules by claiming lack of knowledge." *Id.*, 870 S.W.2d at 368. Likewise, in *B & F Eng'g, Inc.*, the defendant filed its answer nine days too late due to its confusion over whether it had already answered the complaint. 309 Ark. at 177, 830 S.W.2d at 836. The plaintiff moved for a default judgment, and it was granted. *Id.* at 179, 830 S.W.2d at 837–38. The damages hearing resulted

[2]The two issues that were raised only in Formosa's nullified amended pleading—the lack of personal jurisdiction and the right to a jury trial on damages—are not preserved for appellate review because we will not consider arguments that are made for the first time on appeal. *Martin v. Citizens Bank of Beebe*, 283 Ark. 145, 148, 671 S.W.2d 754, 756 (1984). First, as to the claim that personal jurisdiction was lacking, this argument was not made to the trial court, and to the contrary, Formosa represented to the trial court that it was subject to its jurisdiction based on the letters filed by Chang; second, although Formosa requested a jury trial when it filed its untimely January 22, 2009 answer, at the hearing it did not request that the trial court impanel a jury or for a continuance for the purpose of impaneling a jury.

in the entry of a default judgment in the amount of $2.4 million. *Id.*, 830 S.W.2d at 837–38. The supreme court held that the trial court did not abuse its discretion by granting the default judgment to the plaintiff and stated that "to hold otherwise would . . . give sanction to a slipshod treatment of writs of summons by defendants." *Id.* at 179, 830 S.W.2d at 837.

Based on these holdings and Formosa's non-compliance with our state's rules of civil procedure, we hold that the trial court did not abuse its discretion in its entry of default judgment against Formosa, and its order is affirmed in all respects.

Affirmed.

GLADWIN and MARSHALL, JJ., agree.

Williams & Hutchinson, LLP, by: *Timothy C. Hutchinson*, for appellant.

Everett & Wales, by: *Jason H. Wales*, for appellee.