

Remley v. Griffin

Virginia Supreme Court

September 16, 2005

This case involves the circuit court's refusing to set aside a default judgment.

The plaintiff, by counsel, filed suit and served the defendant personally. The defendant apparently had no insurance, so the plaintiff also served the UM carrier, State Farm. Neither answered in a timely fashion, and the plaintiff's lawyer took a default judgment where the trial judge awarded \$150,000.

On the very day that the plaintiff took a default judgment State Farm hand delivered grounds of defense to the court and propounded discovery. They then proceeded to send out subpoenas. When the plaintiff failed to respond to discovery State Farm noticed motions to compel and the plaintiff responded by notifying State Farm that there had earlier been a default judgment and that the 21 days had run. State Farm moved to set aside the judgment under the statute where the trial court has the power to set aside judgments obtained by fraud, and the trial court held a hearing. At the hearing it appeared that the defendant had called the plaintiff's lawyers office several times and had been told to consult his insurance company and that the insurance company's would take care of the problem. The defendant called State Farm and basically was told that they would take care of it also. The comments by the staff at the plaintiff's attorneys office were held not to be fraudulent. They did not interfere with the judicial process or deceive the defendant. Indeed, the defendant was told basically the same thing by State Farm's staff. Furthermore the actions, or rather inactions, of the plaintiff's lawyer, which the court did not approve of, did not constitute fraud on the court either.

As a side point the original judgment order had the names of the plaintiff and the defendant reversed, but the trial judge was allowed to correct this under the scrivener's error statute, and performing this function did not reopen the case or start the 21 day rule running again.

Affirmed for the plaintiff.