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Security Credit Leasing, Inc. v. D.J.'s of Salisbury, Inc. 2000 WL 1663662 (N.C. App. Nov. 7, 2000)

In the case at bar, defendant, a North Carolina restaurant owner, leased security equipment from the plaintiff. Upon delivery of the equipment, the defendant rejected the equipment as unsatisfactory. The plaintiff then sued for breach.

Despite the fact that notice was served by first class mail, the defendant did not answer the complaint; consequently, a default judgment was entered in the Florida court against the defendant. On February 17, 1998, plaintiff filed its Petition to Enforce a Foreign Judgment in North Carolina.

On May 7, 1998, defendant filed a Motion for Relief and Notice of Defenses. The trial court held that this motion was timely filed and subsequently denied the plaintiff's Motion for Default enforcing the judgment.

On appeal, the appellate court considered whether the defendant's motion was filed in a timely manner. Plaintiff asserted that the relevant statute provides defendant with thirty days during which to seek relief from the foreign judgment. According to the plaintiff, failure to act within that period of time bars any further action by the defendant.



The court, upon consideration of the relevant passage, found that the thirty-day period does not serve as a limitation barring further action by defendant; rather, the period offers protection during which the plaintiff may not act. Subsequent to the thirty-day period, the plaintiff may act by filing a Motion for Default. The court points out that the mere filing of a Petition to Enforce a Foreign Judgment does not provide for automatic enforcement, the plaintiff must additionally perform the requisite action to obtain the relief sought.

In the case at bar, the Motion for Relief and Notice of Defenses was filed after the thirty-day period had run, but before the plaintiff had filed a Motion for Default. Consequently, the court held that the defendant's motion was timely filed. As such, the decision of the lower court was affirmed.

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