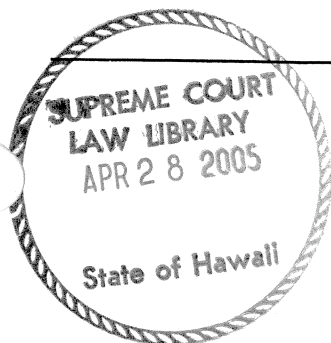


NOT FOR PUBLICATION



NO. 25654

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAII

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CLERK, APPELLATE COURTS
STATE OF HAWAII

2005 APR 27 AM 9:55

FILED

INTERNATIONAL COMMERCIAL BANK OF CHINA, LOS ANGELES
BRANCH, Plaintiff-Appellee, v. L&L (USA), INC.,
Defendant-Appellant, and JOHN DOES 1-25; JANE DOES
1-25; DOE PARTNERSHIPS 1-25; DOE CORPORATIONS 1-
25; DOE NON-PROFIT CORPORATIONS 1-25; and ROE
GOVERNMENTAL ENTITIES 1-25, Defendants

APPEAL FROM THE CIRCUIT COURT OF THE FIRST CIRCUIT
(Civil No. 02-1-1009)

SUMMARY DISPOSITION ORDER

(By: Watanabe, Acting C.J., Lim and Fujise, JJ.)

L & L (USA), Inc. (L&L) appeals from the February 14, 2003 Order Denying Defendant L & L (USA) Inc.'s Motion to Set Aside Entry of Default and Default Judgment.^{1/} After careful review of the issue raised and the arguments made by the parties, as well as the record of the proceedings before the circuit court and the relevant case law, we resolve L&L's point of error as follows:

The circuit court did not abuse its discretion in denying L&L's motion for relief from default and default

^{1/} The Honorable Virginia Lea Crandall presided.

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judgment. L&L was duly served with the complaint initiating the instant suit on May 13, 2002, but did not file an answer nor move for an extension of time to file an answer thereto. Moreover, although notified on August 5, 2002 that default had been entered against it, L&L took no immediate action to set aside the default. Indeed, L&L did not hire an attorney until the morning of the hearing on the Bank's motion for default judgment, more than a month after being served with this motion.

L&L's singular reason for failing to answer the complaint filed in this case, that it was in settlement negotiations with Plaintiff-Appellee International Commercial Bank of China, Los Angeles Branch (the Bank) and, as a result, did not believe the Bank would "seriously" pursue this lawsuit for L&L's violation of the terms of a \$12,500,000 loan, did not constitute excusable neglect. The Bank did not communicate to L&L any intent to forego or delay pursuing the Bank's claims, as stated in the complaint, and the Bank's contemporaneous action seeking and obtaining a writ of attachment upon L&L's real estate holdings in Hawai'i was evidence to the contrary. L&L did not seek an agreement from the Bank that an answer did not need to be filed pending settlement negotiations. Under these circumstances, L&L's unilateral belief that the lawsuit was not a "serious" action was unfounded. On this record, the circuit

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court's decision to deny L&L relief from default was not an abuse of discretion.

Therefore,

IT IS HEREBY ORDERED that the circuit court's February 14, 2003 order is affirmed.

DATED: Honolulu, Hawai'i, April 27, 2005.

On the briefs:

Lex R. Smith,
Ann C. Teranishi, and
Anne E. Lopez,
(Kobayashi, Sugita & Goda),
for Defendant-Appellant.

Corinne K.A. Watanabe

Acting Chief Judge



Associate Judge

Walter C. Davison,
Derek R. Kobayashi, and
Scott G. Morita,
(Goodsill Anderson Quinn &
Stifel),
for Plaintiff-Appellee.

Alisa D. McFujine

Associate Judge