STATE OF MICHIGAN

COURT OF APPEALS

INTERNATIONAL SPORTS MARKETING, INC.,

Plaintiff-Appellee/Cross-Appellant/Cross-Appellee,

v

SAATCHI & SAATCHI NORTH AMERICA, INC., formerly known as SAATCHI & SAATCHI ADVERTISING, INC.,

Defendant-Appellant/Cross-Appellee/Cross-Appellant,

and

CORDIANT, PLC, formerly known as SAATCHI & SAATCHI, PLC; CORDIANT COMPTON WORLDWIDE, formerly known as SAATCHI & SAATCHI COMPTON WORLDWIDE, INC.; CORDIANT HOLDING, INC., formerly known as SAATCHI & SAATCHI HOLDINGS, INC.; and SAATCHI & SAATCHI WORLDWIDE ADVERTISING, INC.,

Defendants/Cross-Defendants/Cross-Appellees/Cross-Appellants,

and

KALEIDOSCOPE HOLDINGS, INC.,

Defendant/Cross-Plaintiff/Appellee/Cross-Appellee/Cross-Appellant,

and

UNPUBLISHED
December 3, 2002

No. 225928
Wayne Circuit Court
LC No. 96-630194-CK

KALEIDOSCOPE ENTERTAINMENT, INC., and LIFESTYLE MARKETING GROUP, INC., also known as LIFESTYLE MARKETING GROUP,

Defendants/Appellees/Cross-Appellees,

and

DONALD R. DIXON and MARK ROTHENBERG,

Defendants/Cross-Plaintiffs/Appellees/Cross-Appellees,

and

VENTURA ENTERTAINMENT GROUP, LTD, also known as VENTURA HOLDINGS,

Defendant/Appellee/Cross-Appellee.

Before: White, P.J., and Neff and Jansen, JJ.

PER CURIAM.

Defendant Saatchi & Saatchi North America, Inc. ("Saatchi") appeals as of right from the March 17, 2000, order denying Saatchi's motion to set aside the April 28, 1995 default judgment in the amount of $21,000,000 entered in favor of plaintiff International Sports Marketing ("ISM") against Lifestyle Marketing Group ("LMG"), a former unincorporated division and assumed name of Saatchi registered in the state of New York; directing Saatchi to indemnify LMG for the amount of the default judgment; and holding Saatchi liable to plaintiff ISM for the default judgment. Plaintiff ISM has filed a cross claim of appeal challenging the trial court's order that dismissed plaintiff's remaining claims against the other defendants and its alternative theories against Saatchi. Defendant Kaleidoscope Holdings, Inc. ("Kaleidoscope") has also filed a cross claim of appeal asserting that the trial court's order should not be interpreted as a dismissal on the merits of Kaleidoscope's cross claim against Saatchi asserting indemnity rights. The Cordiant group of defendants have also filed a cross claim of appeal asserting that the trial court erred in denying their motion for summary disposition for lack of personal jurisdiction and that the trial court did not err in dismissing the cross claims of defendants Kaleidoscope, Donald Dixon, and Mark Rothenberg against Saatchi and the Cordiant group of defendants. We now set aside the default judgment and dismiss all the defendants from this case.

This is the second time that this Court has had occasion to address plaintiff's complaint filed in Wayne Circuit Court on July 16, 1992 alleging tortious interference with a business relationship and civil conspiracy arising from its attempt to market a commemorative coin series depicting Greg Louganis in conjunction with the 1988 Summer Olympics. Among the named parties in plaintiff's complaint were Saatchi and LMG, the latter of which was identified by plaintiff in its complaint as "a subsidiary of Defendant Saatchi & Saatchi whose business activities include corporate sponsorship programs and athlete representation." In fact, LMG was an unincorporated division and an assumed name of Saatchi, which had filed a certificate of assumed name in the State of New York in July of 1990, stating that any action against LMG should be served on Saatchi. However, prior to plaintiff's lawsuit, Saatchi sold the name and assets of LMG to Kaleidoscope in March of 1992.[1] LMG was then incorporated by Kaleidoscope as a subsidiary under the name of Lifestyle Marketing Group, Inc. ("LMG, Inc."), until it was purchased by Ventura Entertainment Group, Ltd. on December 1, 1994. The March 1992 sale of LMG by Saatchi to Kaleidoscope contained an indemnity agreement stating that "Saatchi & Saatchi will indemnify and hold Kaleidoscope harmless for any claim resulting from any acts or allegations relating to the activities of LMG prior to the date of closing [March 31, 1992]" and that "Kaleidoscope will indemnify and hold Saatchi & Saatchi harmless for any claim resulting from any acts or allegations relating to activities of LMG after the date of closing."

Plaintiff served its complaint against Saatchi on the latter's registered agent in New York City on October 8, 1992. Although plaintiff was put on notice based upon public records that LMG was an assumed name of Saatchi in the State of New York, and thus not a separate corporate entity, plaintiff did not serve its complaint against LMG on Saatchi. Rather, plaintiff served Mark Rothenberg personally at LMG Inc.'s offices also in New York City on September 16, 1992 with a summons addressed to LMG. In response to plaintiff's complaint, Saatchi moved to dismiss the suit against it in November of 1992. However, according to Saatchi, it did not include LMG in its dismissal motion because it had not been served with the summons for LMG.[2]

On December 2, 1992, the Wayne Circuit Court granted summary disposition in favor of Saatchi and several other defendants, finding that plaintiff failed to state a claim in its complaint that Saatchi and these other defendants tortiously interfered with plaintiff's commemorative coin project.[3] Nevertheless, two weeks after the trial court dismissed Saatchi from the case, plaintiff filed a notice of default on December 17, 1992 for LMG's failure to answer the complaint.

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[1] Although Saatchi sold LMG to Kaleidoscope in March of 1992, it did not file a certificate of discontinuance of assumed name with regard to LMG until May 10, 1995.

[2] Notwithstanding that Saatchi was not served with the summons addressed to LMG, Saatchi was apprised by plaintiff's complaint that its assumed name, LMG, was also being sued. Thus, Saatchi's failure to include LMG in its dismissal motion cannot be attributed solely to plaintiff's failure to serve it with the summons for LMG. Because LMG had not been formally dismissed from the case, plaintiff proceeded with its default and default judgment actions against LMG.

[3] The defendants that were dismissed were Saatchi, Impel Marketing, and the Howard Marlboro Group. Other defendants, including LMG, were not dismissed, and thus the case remained open in the trial court.

Eventually, more than two years later, on February 23, 1995, plaintiff filed a motion for entry of default judgment against LMG. On April 28, 1995, the trial court entered an order of default judgment against LMG only in the amount of $21,000,000 plus interest. However, because Saatchi had been previously dismissed from the case, counsel for Saatchi did not attend the hearing on the entry of the default judgment against LMG. At the hearing, it was made clear that the default judgment was being entered against LMG, as a division of Saatchi, and not against LMG, Inc., the entity actually served.

On May 12, 1995, plaintiff then filed its claim of appeal from the grant of summary disposition entered about two and one-half years earlier by the Wayne Circuit Court on December 2, 1992. On appeal to this Court, the circuit court's order was affirmed in part, and reversed in part regarding the tortious interference with a business relationship and civil conspiracy claims against Impel Marketing only. *International Sports Marketing, Inc v Saatchi & Saatchi, et al.*, unpublished opinion per curiam of the Court of Appeals, issued July 30, 1996 (Docket No. 185792). The Michigan Supreme Court subsequently denied plaintiff's application for leave to appeal. *International Sports Marketing, Inc v United States Olympic Committee*, 456 Mich 895 (1997).[4]

On July 31, 1996, the day after this Court affirmed the circuit court's dismissal of Saatchi from the case, plaintiff filed the present action against Saatchi to enforce the default judgment pursuant to MCR 2.621. Plaintiff and Saatchi filed cross-motions for summary disposition. In a written opinion and order dated March 24, 1997, the trial court, in pertinent part, denied plaintiff's motion for summary disposition, but granted Saatchi's motion for summary disposition, finding that Saatchi was not liable for LMG's allegedly tortious conduct.

Plaintiff subsequently moved for reconsideration and for summary disposition. Kaleidoscope moved for summary disposition as well, while Saatchi filed for entry of an order of dismissal under the seven-day rule, moved for summary disposition or, alternatively, for relief from judgment. In an opinion and order entered on February 11, 1998, the trial court found that Saatchi could be held liable under the indemnity agreement with Kaleidoscope for LMG's conduct. The trial court also found that Kaleidoscope could be liable under a successor liability theory and under the same indemnity agreement. With regard to LMG, the trial court found that plaintiff could pierce the corporate veil, but not with respect to Dixon and Rothenberg. Most significantly, the trial court found that LMG failed to defend in the underlying action when the default judgment was entered so that it could not now escape liability. Therefore, the trial court concluded that Saatchi and Kaleidoscope were liable for LMG's debt under the indemnity agreement. Ultimately, the trial court decided not to set aside the default judgment against LMG, that Saatchi was liable for the default judgment against LMG pursuant to the terms of the indemnity agreement because the allegations in the complaint were for conduct that occurred

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[4] The parties also note that plaintiff filed a complaint in Iowa in September 1993 against some of the same defendants involved in the 1992 action in the Wayne Circuit Court involving essentially the same allegations as well. These defendants' motions for summary judgment were granted by the Iowa trial court on September 27, 1995 and subsequently affirmed by the Iowa Court of Appeals and Iowa Supreme Court, respectively.

when LMG was part of Saatchi, and that Kaleidoscope and the Cordiant defendants were not liable for LMG's debt.

Saatchi then moved for reconsideration, which the trial court denied in an opinion and order dated February 15, 2000. In addition, the trial court rejected Saatchi's argument for setting aside the default judgment, once again finding that Saatchi was liable, under the indemnity agreement with Kaleidoscope, for LMG's allegedly tortious conduct. The trial court also dismissed "[a]ll other claims by the parties against one another." The final judgment was entered on March 17, 2000, denying Saatchi's motions to set aside the default judgment, for reconsideration, for additional findings and amendment, and to require plaintiff to post bond for costs. The trial court's order also required Saatchi to indemnify LMG for the default judgment, making Saatchi liable to plaintiff for the default judgment in the amount of $21,000,000.

On appeal, Saatchi argues that the trial court abused its discretion by failing to set aside the default judgment in its February 15, 2000 order in which the court denied Saatchi's motion for reconsideration to set aside the default judgment. MCR 2.603(D)(1) provides:

> A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.

Saatchi argues that the default judgment should be set aside because the trial court never obtained jurisdiction over LMG since plaintiff failed to serve Saatchi with the summons and complaint for LMG. However, even assuming that jurisdiction existed, Saatchi contends that, under *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233-34; 600 NW2d 638 (1999), there was good cause and a meritorious defense to set aside the default judgment in view of the numerous procedural irregularities in this case and the failure of plaintiff to state cognizable claims for tortious interference with a business relationship or civil conspiracy or to adduce facts in support of such claims. Given plaintiff's failure to state or support its claims, Saatchi further contends that the failure to set aside the default judgment would result in manifest injustice, citing this Court's recent decision in *White v Busuitso*, 230 Mich App 71, 78; 583 NW2d 499 (1998), where we held that "manifest injustice requiring a default judgment to be set aside occurs where the plaintiff failed to state a claim upon which relief can be granted."

In this case, we agree with Saatchi that the trial court erred in failing to set aside the default judgment. We note that an unincorporated division of a corporation does not have independent legal existence, but may be sued only through the corporation of which it is a part. See 1 W. Fletcher, *Cyclopedia of the Law of Private Corporations* § 25 at 484 (perm. ed. rev. 1999)("Unincorporated departments or parts of a corporation are not entities separately considered."); *Reines Distributors, Inc v Admiral Corp*, 256 F Supp 581, 583 (SD NY 1966) (noting that "[u]nlike the relation between a subsidiary and a parent, the nexus between a division of a corporation and the corporation has no legal significance"); *Main Street Development v DeMicco*, 248 Ill App 3d 392, 397; 618 NE2d 442, 445; 187 Ill Dec 851, 854 (1993) (noting that the term 'division of' has no legal significance"). At all times relevant for the purpose of plaintiff's complaint, LMG was an unincorporated division and assumed name of Saatchi, which was the proper corporate party in plaintiff's suit against LMG. As a result, LMG was not capable of being sued in its own right and could not be joined in an action against Saatchi. See *Sheldon v Kimberly-Clark Corp*, 111 AD2d 912; 490 NYS2d 810 (1985) (affirming

in a memorandum opinion the lower court's order denying leave to enter a default judgment and dismissing the plaintiff's action, finding that because the unincorporated division of the defendant corporation "is not a jural entity amenable to suit in its own right, its joinder herein was improper and its failure to answer the complaint cannot, therefore, give rise to a default in appearance") Thus, any claim against LMG as a division of Saatchi was dismissed when Saatchi was dismissed from the case pursuant to the December 2, 1992 order granting Saatchi's motion for summary disposition. This being so, the default judgment obtained by plaintiff against LMG as a division of Saatchi was void *ab initio*. Accordingly, we vacate the default judgment, the orders requiring Saatchi to indemnify LMG and to pay plaintiff ISM for the default judgment, and hereby dismiss all the defendants from the case.

Reversed.

/s/ Helene N. White
/s/ Janet T. Neff
/s/ Kathleen Jansen