

STATE OF MICHIGAN
COURT OF APPEALS

ROBERT CHEER and ROXANNE CHEER,

Plaintiffs-Appellees,

v

ALBAN BUILDING COMPANY, L.L.C., and
PALJOKA VULJAJ,

Defendants-Appellants.

UNPUBLISHED

March 4, 2008

No. 275692

Oakland Circuit Court

LC No. 2006-076369-CK

Before: Whitbeck, P.J., and Jansen and Davis, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's order denying their motion to set aside a default judgment. We affirm. This appeal is being decided without oral argument. MCR 7.214(E).

We agree that a defaulted defendant who appears in an action before a judgment is entered has a right to participate in a hearing for damages if the trial court holds such a hearing. *Wood v DAHE*, 413 Mich 573, 578; 321 NW2d 653 (1982). We further agree that a defaulted defendant may be entitled to a jury trial regarding damages. See *Mink v Masters*, 204 Mich App 242, 246; 514 NW2d 235 (1994). But once a default judgment has been entered for a specific amount against a defendant who has never appeared, and assuming that lack of personal jurisdiction is not at issue, a motion to set aside a default or default judgment "shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed." MCR 2.603(D)(1).

The trial court's ruling on a motion to set aside a default judgment is reviewed for an abuse of discretion. *AMCO Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 97; 666 NW2d 623 (2003). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

Defendants were not entitled to have the default judgment set aside in the present case. Defendants offered only their alleged meritorious defense as good cause. This Court stated in *Huggins v Bohman*, 228 Mich App 84, 87; 578 NW2d 326 (1998), that a meritorious defense to an action may fulfill the "good cause" requirement because allowing a default or default judgment to stand when a valid defense exists would result in manifest injustice. However, our Supreme Court

has held that “[t]his reflects a misunderstanding of the separate nature of the requirements under MCR 2.603(D)(1)[.]” *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 230; 600 NW2d 638 (1999). “Good cause is established by (1) a procedural irregularity or defect, or (2) a reasonable excuse for not complying with the requirements that created the default. Manifest injustice is *not* a third form of good cause that excuses a failure to comply with the court rules where there is a meritorious defense. Rather, it is the result that would occur if a default were not set aside where a party has satisfied the ‘good cause’ and ‘meritorious defense’ requirements of the court rule.” *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639, 653; 617 NW2d 373 (2000) (emphasis in original; citations omitted). It is true that “if a party states a meritorious defense that would be absolute if proven, a lesser showing of ‘good cause’ will be required than if the defense were weaker, in order to prevent manifest injustice,” but a meritorious defense alone does not excuse the need to show good cause. *Alken-Ziegler, supra* at 233-234.

Defendants were not entitled to have the judgment set aside with respect to the amount of damages in this case. Defendants attempted to establish good cause by showing that plaintiffs had failed to submit sufficient documentary evidence to support the amount of damages claimed. The court did not hold a hearing or take testimony on the issue. See MCR 2.603(B)(3)(b). However, defendants’ affidavit failed to set forth specific facts showing that plaintiffs were not entitled to the amount of damages claimed.

In sum, defendants have failed to establish good cause for having the default judgment set aside and have failed to explain why the amount of damages awarded to plaintiffs was not appropriate. We cannot conclude that the trial court abused its discretion by denying defendants’ motion.

Affirmed.

/s/ William C. Whitbeck

/s/ Kathleen Jansen

/s/ Alton T. Davis