STATE OF MICHIGAN

COURT OF APPEALS

CNC PRECISION MACHINING, INC.,

Plaintiff-Appellee,

v

DELTA SPLAT, INC., and BLAST, INC., a/k/a BOB LONG TECHNOLOGIES,

Defendants-Appellants,

and

BANK OF AMERICA,

Garnishee Defendant.

UNPUBLISHED
December 21, 2010

No. 293559
Kent Circuit Court
LC No. 09-00524-CK

Before: BECKERING, P.J., and TALBOT and OWENS, JJ.

PER CURIAM.

Defendants appeal as of right the trial court's entry of a default judgment in favor of plaintiff wherein the trial court awarded plaintiff damages for breach of contract. We affirm.

Plaintiff brought suit against defendants for breach of contract arising out of a dispute over a manufacturing contract. Defendants, corporations doing business in California, failed to respond to the complaint and summons, which were served pursuant to an order allowing alternate service via first-class mail. Defendants did not appear in court until after the default judgment was entered and Bank of America froze their assets. Defendants moved to set aside the default judgment and argued they had no notice of the complaint. The trial court denied defendants' motion. On appeal, defendants contend that the trial court erred and that the default judgment amounted to manifest injustice.

We review entry of a default judgment for an abuse of discretion. *ISB Sales Co v Dave's Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003). A trial court abuses its discretion when its ruling falls outside the range of "reasonable and principled" outcomes. *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006) (quotation omitted).

MCR 2.603(D) provides in relevant part as follows:

> A motion to set aside a default or a 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) (emphasis added).]

"'Good cause'" can be shown by: (1) a substantial defect or irregularity in the proceedings upon which the default was based, (2) a reasonable excuse for failure to comply with the requirements which created the default, or (3) some other reason showing that manifest injustice would result from permitting the default to stand." *Shawl v Spence Bros, Inc*, 280 Mich App 213, 221; 760 NW2d 674 (2008) (quotations omitted).

In this case, defendants submitted an affidavit of facts showing a meritorious defense. Thus, a lesser showing of good cause was necessary to justify the setting aside of the default judgment. *Id.* at 233-234. Nevertheless, we find that defendants failed to show good cause to set aside the default judgment because defendants did not show a reasonable excuse for failing to respond to the complaint and summons, and did not establish a substantial defect or irregularity in the proceedings, upon which the default was based. *Id*. Here, California sheriff deputy Mary Delgado submitted a declaration of diligence and asserted that she made six attempts to serve Robert Long, the president of the corporations, at his last known address. Delgado left her card with Long's daughter, and a card was left at the residence on two other occasions. Defendants provided the trial court with a copy of a voicemail message that Delgado left with Long wherein Delgado acknowledged missing a meeting with Long, but stated that she would meet with Long at any time the following Wednesday. Delgado left her contact information, but nothing in the record supports that Long followed-up on the message and contacted Delgado about service. And, at the time Delgado attempted to get a hold of and serve Long, Long was aware that the parties had a dispute over payment. Emails submitted to the trial court fully support this. In addition, plaintiff's counsel submitted an affidavit wherein he asserted that he effectuated alternate service when he sent four copies of the complaint and summons to the corporate addresses and to Long via first-class mail. Plaintiff's counsel also submitted an affidavit wherein he stated that he sent a copy of the default judgment to the same addresses. The Post Office did not return any of the mail as undeliverable, and it is presumed to have been received. *Stacey v Sankovich*, 19 Mich App 688, 694; 173 NW2d 225 (1969). On this record, we affirm the trial court's finding that there was no reasonable excuse to satisfy the good cause requirement.

Defendants also failed to establish good cause by a substantial defect or irregularity in the proceedings upon which the default was based. *Shawl*, 280 Mich App at 221. While defendants were not properly served with a copy of the summons and complaint under MCR 2.105(D), the trial court entered an order allowing alternate service. Defendants were served pursuant to that order. The mailings were presumed to be received. *Stacey*, 19 Mich App at 694 . Although defendants offered evidence to rebut that presumption, the issue was one for the trier of fact. *Id.* And, the trial court herein determined that there was "some dodging of the service." Thus, good cause was not established.

Finally, we conclude that failing to set aside the default judgment would not result in manifest injustice. In the context of setting aside a default judgment, good cause has been defined as "some other reason showing that manifest injustice would result from permitting the default to stand." *Shawl*, 280 Mich at 221. However, our Supreme Court has explained "manifest injustice" as follows:

> "[M]anifest injustice" is not a discrete occurrence such as a procedural defect or a tardy filing that can be assessed independently. Rather, manifest injustice is the result that would occur if a default were to be allowed to stand where a party has satisfied the "meritorious defense" and "good cause" requirements of the court rule. [*Alken-Ziegler, Inc, v Waterbury Headers Corp*, 461 Mich 219, 233-234; 600 NW2d 638 (1999).]

In this case, because defendants failed to satisfy the "good cause" requirement under the court rule, allowing the default judgment to stand will not amount to manifest injustice. *Alken-Ziegler, Inc*, 461 Mich at 233-234.

In sum, the trial court's decision denying defendants' motion to set aside the default was not an abuse of discretion where it did not fall outside the range of "reasonable and principled outcomes." *ISB Sales Co*, 258 Mich App at 526; *Maldonado*, 476 Mich at 388.

Affirmed.

/s/ Jane M. Beckering
/s/ Michael J. Talbot
/s/ Donald S. Owens