STATE OF MICHIGAN

COURT OF APPEALS

STEVEN BONNER,

Plaintiff-Appellant,

v

BALLY TOTAL FITNESS OF THE MIDWEST, INC., f/k/a BALLY TOTAL FITNESS INTERNATIONAL, INC.,

Defendant-Appellee.

UNPUBLISHED
June 19, 2012

No. 302782
Wayne Circuit Court
LC No. 10-002507-CK

Before: GLEICHER, P.J., and M. J. KELLY and BOONSTRA, JJ.

PER CURIAM.

In this suit for breach of contract, plaintiff Steven Bonner appeals by right the trial court's order setting aside the default against defendant Bally Total Fitness of the Midwest Inc., dismissing Bonner's claim against Bally Fitness, and denying Bonner's motion for entry of default judgment. Because we conclude that the trial court did not err when it set aside the default and dismissed Bonner's claim, we affirm.

In March 2008, Bonner obtained a license from Bally Fitness to operate a restaurant at a Bally Fitness location. Bally Fitness, however, entered into bankruptcy reorganization and closed that location in December 2008. In March 2010, Bonner sued Bally Fitness for $694,000 in damages related to its allegedly wrongful termination of the license. Bally Fitness did not file an answer to Bonner's complaint and, in May 2010, Bonner applied for entry of default against Bally Fitness, which default was duly entered. Later that month, Bally Fitness moved to set aside the default, moved to have Bonner's claim dismissed, and requested sanctions. At the end of May, Bonner, who now represented himself, moved for entry of a default judgment.

The trial court granted Bally Fitness' motions and entered an order setting aside Bally Fitness' default and dismissed Bonner's claim. This appeal followed.

Bonner first argues that the trial court erred by denying his motion for entry of a default judgment because Bally Fitness did not have good cause under MCR 2.603(D)(1) to set aside the default. This court reviews a trial court's decision on a motion to set aside a default or grant a default judgment for an abuse of discretion. *Huntington Nat Bank v Ristich*, 292 Mich App 376, 383; 808 NW2d 511 (2011). "A trial court abuses its discretion when it reaches a decision that falls outside the range of principled outcomes." *Id.*

"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." MCR 2.603(D)(1). Good cause to set aside a default 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) (internal quotation marks and citations omitted). "[I]f 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 a manifest injustice." *Id.* at 233 (internal quotation marks and citations omitted).

Here, the undisputed evidence showed that Bally Fitness filed for bankruptcy *before* Bonner sued Bally Fitness. When Bally Fitness filed its petition, the automatic bankruptcy stay came into effect. See 11 USC § 362(a); see also *In re Soares*, 107 F3d 969, 975 (CA 1, 1997) (noting that the automatic stay springs into being immediately to allow the debtor to resolve its debts in an orderly fashion and to prevent creditors from bringing different proceedings in different courts and, thereby, set in motion a free-for-all in which opposing interests maneuver to capture the lion's share of the debtor's assets). As such, Bonner could not commence or continue "a judicial, administrative, or other action or proceeding against" Bally Fitness. 11 USC § 362(a)(1). Indeed, the record shows that the bankruptcy court specifically authorized Bally Fitness to reject certain unexpired property leases and related contracts and that this authorization included the agreement with Bonner. In its order, the bankruptcy court also plainly retained jurisdiction over all issues arising from or related to the implementation and interpretation of the order. The bankruptcy court entered an order in January 2009, which established March 9, 2009, as the deadline by which Bonner had to bring any claims against Bally Fitness arising from Bally Fitness' actions with regard to Bonner's contract. The order further provided that any holder of a claim that fails to file a proof of claim in accordance with the order is forever barred from asserting a claim against Bally Fitness. The bankruptcy court confirmed Bally Fitness' reorganization plan in August 2009 and retained jurisdiction regarding all matters arising out of, or related to, the bankruptcy, including Bally Fitness' rejection of any contracts. Thus, by filing suit and requesting a default against Bally Fitness, Bonner may be subject to damages and sanctions for willfully violating the bankruptcy stay. See 11 USC § 362(k)(1).

Because Bonner could not commence an action in violation of the stay, Bally Fitness clearly had proof of "a substantial defect or irregularity in the proceedings upon which the default was based", in addition to a "reasonable excuse" for failing to file its answer, and also proof that allowing the default to stand would amount to "manifest injustice"; that is, Bally Fitness established good cause. See *Shawl*, 280 Mich App at 221; see also *In re Soares*, 107 F3d at 973-976 (explaining that the entry of a default judgment after a debtor files for bankruptcy protection constitutes a violation of the automatic stay and stating that the majority of courts have held that the default is void). Similarly, because Bally Fitness' defense—lack of subject matter jurisdiction—was absolute, we cannot conclude that the trial court abused its discretion when it concluded that Bally Fitness was entitled to have the default set aside.

Bonner also argues that the trial court erred when it considered an unsigned affidavit to support Bally Fitness' motion to set aside the default. However, his argument is limited to a single sentence with one citation. He did not discuss or analyze any authorities stating that a motion to set aside a default must be rejected if supported by a deficient affidavit and he failed to acknowledge or discuss the evidence that Bally Fitness later submitted a signed, but unsworn, affidavit. Given his cursory treatment of this issue, we conclude that he has abandoned this claim of error. See *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998).

There were no errors warranting relief.

Affirmed. As the prevailing party, Bally Fitness may tax its costs. MCR 7.219(A).

/s/ Elizabeth L. Gleicher
/s/ Michael J. Kelly
/s/ Mark T. Boonstra