IN THE
ARIZONA COURT OF APPEALS
DIVISION ONE

CSL HOLDINGS, LLC, et al., *Plaintiffs/Appellees*,

v.

SKAPA PROPERTIES, LLC, *Defendant/Appellee*.

JASON MITCHELL PROPERTIES, LLC, et al., *Proposed Intervenors/Appellants*.

No. 1 CA-CV 20-0576
FILED 11-30-2021

Appeal from the Superior Court in Maricopa County
No. CV2019-009500
The Honorable Timothy J. Thomason, Judge

AFFIRMED

COUNSEL

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By Amy Abdo, Brett Gilmore, Timothy J. Berg
Counsel for Plaintiffs/Appellees

Doncaster Law PLLC, Phoenix
By Samuel J. Doncaster
Counsel for Intervenors/Appellants

MEMORANDUM DECISION

Presiding Judge Randall M. Howe delivered the decision of the court, in which Judge Brian Y. Furuya and Judge Michael J. Brown joined.

H O W E, Judge:

¶1 Jason Mitchell Properties, LLC and Jason Mitchell (collectively "JMP") appeal the trial court's denial of their motions to intervene and to set aside the default judgment for CSL Holdings, LLC and against Skapa Properties, LLC. For the reasons stated below, we affirm.

FACTS AND PROCEDURAL HISTORY

¶2 This action results from an ongoing business dispute between JMP and Prestige Worldwide Enterprises, LLC ("Prestige") over the proceeds of the now-dissolved CSL. In 2013, Skapa, a real estate investment limited liability company, named Christopher Camberlango as its manager. In 2016 and 2017, JMP lent considerable sums of money to Camberlango and one of his business entities, Camberlango Properties, LLC. Soon after, Skapa changed its membership to include Camberlango, acting through Camberlango Properties, LLC, as the majority member and JMP, which owned a 30% interest as a nonmanagerial member.

¶3 In fall 2017, Skapa and Prestige formed CSL to act as a holding company for real estate investments, each owning a 50% interest in the company. The operating agreement required that Skapa and Prestige receive each other's written consent before making "any voluntary or involuntary . . . pledge" of the "Membership Rights" or interest in CSL, including "distributions, Profits, Losses, and other items of gain, loss, deduction and credit of [CSL]."

¶4 In August 2018, JMP liquidated its 30% interest in Skapa. With both Camberlango and Skapa unable to redeem JMP's interest, Camberlango secured the balance owed to JMP by pledging Skapa's interest in CSL's profits, contracts, and other distributions to JMP. Skapa also permitted JMP to stand "in the name" of Skapa until the obligation of the security and pledge agreement had been satisfied and amended its articles to remove JMP's ownership interest. Camberlango and Skapa soon defaulted on the loan and JMP foreclosed on Skapa's interest in CSL at a

foreclosure sale. CSL never formally acknowledged that Skapa had pledged its interest in CSL to JMP, however.

¶5 Meanwhile, Skapa and Prestige amended CSL's operating agreement to remove Skapa as manager of CSL until JMP's secured debt was satisfied or resolved, making Prestige CSL's sole manager. They also added a disabling-conduct clause that if a CSL manager-member committed fraud, gross negligence, or misrepresentation, the other managing-member could purchase all that member's interest. Camberlango died soon after completion of the amendments in January 2019.

¶6 In early 2019, Prestige sought declaratory judgment against Skapa and JMP, alleging that Skapa had committed disabling conduct by improperly pledging its CSL interest to JMP and that JMP consequently was not a member of CSL. JMP claimed that Skapa had engaged in an ongoing fraudulent scheme. Prestige tried to resolve its dispute with JMP and voluntarily dismissed it from the declaratory judgment action. Skapa never responded to the action, and the court consequently entered a default judgment against Skapa, declaring Skapa a "disabled member" of CSL.

¶7 CSL then sued Skapa, alleging, among other things, that Skapa breached its contract with CSL by fraudulently transferring its CSL interest to JMP. Skapa again did not respond to the action. CSL did not move for default judgment, however, for almost six months. In that time, Skapa and CSL defaulted on promissory notes to Prestige, which foreclosed on the respective security interests and acquired all CSL's property and rights. It dissolved CSL effective February 2020 and distributed CSL's profits to itself.

¶8 In 2020, JMP sued CSL, Skapa, and Prestige to claim its secured interest in Skapa's CSL profits and other contracts that Skapa had with CSL ("the Mitchell case"). Before Prestige filed an amended answer and counterclaim in that case, however, CSL moved for entry of default judgment against Skapa and the court entered default, awarding CSL $12,622,830 in total damages. Prestige then filed an amended answer and an amended counterclaim in the Mitchell case, arguing that the default judgment required an offset against any award in JMP's favor and that JMP owed it the amount awarded in the default judgment as Skapa's successor-in-interest.

¶9 JMP moved to intervene both as of right under Arizona Rule of Civil Procedure 24(a)(2) and permissively under Rule 24(b) and to set

aside the default judgment in this case. JMP alleged that it was "entirely unaware" that Prestige had sued Skapa and that Prestige had concealed the existence of the action. JMP also argued that the default judgment should be set aside because CSL procured the default judgment through either surprise or fraud or that extraordinary circumstances otherwise justified relief.

¶10 The court denied JMP's motion to intervene as untimely. It found that Skapa had serious financial difficulties and that JMP knew that Skapa was not defending itself in litigation. Had JMP acted in a reasonable manner, it would have learned about this case and could have sought timely intervention. The court also found that JMP was not Skapa's business successor and that as another purported creditor of Skapa, it lacked an interest or a common issue of law or fact that it could not otherwise litigate. The court dismissed JMP's allegation that CSL and Prestige schemed to hide the action as having "no merit." Because the court denied the motion to intervene, it found the motion to set aside moot. Even so, the court denied the motion on its merits, finding that JMP did not take prompt action and did not provide a meritorious defense. JMP moved for reconsideration, arguing that the court erred because, among other reasons, it had a contractual right to defend in Skapa's stead. The court denied the motion and JMP timely appealed.

DISCUSSION

¶11 JMP argues that the court erred in denying its motions to intervene and to set aside default judgment. We review de novo the superior court's ruling on the right to intervene under Rule 24(a)(2). *Dowling v. Stapley*, 221 Ariz. 251, 269–70 ¶ 57 (App. 2009). We review the court's rulings on the timeliness of a motion to intervene, permissive intervention under Rule 24(b), and a motion to set aside under Rule 60(b) for an abuse of discretion. *Heritage Vill. II Homeowners Ass'n v. Norman*, 246 Ariz. 567, 570 ¶ 9 (App. 2019) (rulings on timeliness of Rule 24(a)(2) motion); *Dowling*, 221 Ariz. at 270 ¶ 57 (permissive intervention); *Laveen Meadows Homeowners Ass'n v. Mejia*, 249 Ariz. 81, 83 ¶ 6 (App. 2020) (motion to set aside).

I. Denial of Motion to Intervene

¶12 The court did not abuse its discretion in denying JMP's motion to intervene because the motion was untimely. Under Rule 24(a)(2), the superior court *must* permit a person to intervene who claims an interest in the subject of the action, and the disposition of the action may as a practical matter impair or impede the person's ability to protect those

interests, unless existing parties adequately represent those interests. Under Rule 24(b), the superior court *may* permit a person to intervene in an action when (1) a statute confers a conditional right to intervene; or (2) the person has a claim or defense that shares a common question of law or fact with the main action.

¶13 Under both relevant provisions of Rule 24, the threshold inquiry is the timeliness of the motion to intervene. Rule 24(a); Rule 24(b)(1). Timeliness hinges on the stage at which the action has progressed before intervention is sought and whether the movant could have sought intervention at an earlier stage of the proceedings. *Heritage Vill. II Homeowners Ass'n*, 246 Ariz. at 570 ¶ 13. An important consideration is whether the delay resulting from the motion prejudices the existing parties. *See State ex rel. Napolitano v. Brown & Williamson Tobacco Corp.*, 196 Ariz. 382, 384 ¶ 5 (2000).

¶14 JMP moved to intervene after judgment had been granted in CSL's favor. Intervention after judgment is unusual and not favored, *see Matter of One Cessna 206 Aircraft, FAA Registry No. N-72308, License No. U-206-1361*, 118 Ariz. 399, 401 (1978), and granted only in "extraordinary and unusual circumstances," *Gonzalez-Burgueno v. Nat'l Indem. Co.*, 134 Ariz. 383, 384 (App. 1982). Such motions will be granted only upon a "strong showing of entitlement" and "of justification for failure to request intervention sooner." *One Cessna 206 Aircraft,* 118 Ariz. at 401.

¶15 In ruling that the motion to intervene was untimely, the court found that JMP did not justify its failure to request intervention sooner because JMP should have known long before default judgment had been entered that it may have had an interest in the litigation and that Skapa was not protecting that interest. Although Arizona courts have not yet addressed whether a party's constructive knowledge of a related proceeding in which its interest was at stake is relevant to Rule 24's timeliness requirement, federal courts have done so in applying Federal Rule of Civil Procedure 24, which is substantively indistinguishable from Arizona's Rule 24. *See Heritage Vill. II Homeowners Ass'n*, 246 Ariz. at 572 ¶ 19 ("[W]e may look for guidance to federal courts' interpretations of their rules.").

¶16 Federal courts consider when a party should have known that its interests were not being defended in related litigation when determining the timeliness of motions under Rule 24. *See Heartwood, Inc. v. U.S. Forest Serv., Inc.*, 316 F.3d 694, 701 (7th Cir. 2003); *Lucas v. McKeithen*, 102 F.3d 171, 173 (5th Cir. 1996); *Farmland Dairies v. Comm'r of N.Y. State Dep't of Agric. &*

Mkts., 847 F.2d 1038, 1044 (2d Cir. 1988) (finding motion to intervene untimely because the proposed intervenors could have moved when they "were aware of this and related litigation"). JMP knew that Skapa's finances and fraudulent business practices likely would have led to it being subject to extensive litigation because JMP had foreclosed on a debt Skapa owed and alleged that Skapa had conducted a fraudulent scheme. It also knew that Skapa's principal had died in early 2019 and that Skapa was therefore not defending its interest.

¶17 Indeed, Prestige had sued Skapa and JMP for declaratory relief in an action in which Skapa defaulted. Although Prestige had voluntarily dismissed JMP to work out an agreement, JMP could have asserted its right to intervene in that proceeding and defended the position that it now seeks to defend here. *See Heritage Vill. II Homeowners Ass'n*, 246 Ariz. at 572 ¶ 15 (timeliness must be measured from when the defendant no longer represented movant's interests). Even so, the negotiations and declaratory action should have put JMP on notice that any purported interest it had in Skapa was at stake in a related action. Thus, allowing JMP to intervene at this time would unnecessarily prejudice Prestige by delaying its ability to exercise its rights against Skapa. *See, e.g.*, *Brown & Williamson Tobacco Corp.*, 196 Ariz. at 384 ¶ 7 (post-judgment intervention would likely involve extensive discovery, motion practice, and possibly a trial, followed by multiple rounds of appeals, which would be expensive and time-consuming).

¶18 JMP argues, however, that its motion was timely because it was not on notice of this suit and that it moved to intervene only 28 days after first knowing of the suit. After CSL obtained declaratory relief, however, its next step was to sue Skapa for monetary relief. Since JMP knew of the declaratory relief and the likelihood that this suit would follow, it had constructive notice that its interest was at stake for Rule 24 purposes. *See Floyd v. City of New York*, 302 F.R.D. 69, 89 (S.D.N.Y. 2014) (commencement of related actions provides constructive notice for Rule 24). JMP also knew that Prestige's and CSL's interests implicated its own, which also provided constructive notice under Rule 24. *See MasterCard Int'l Inc. v. Visa Int'l Serv. Ass'n, Inc.*, 471 F.3d 377, 390 (2d Cir. 2006) (proposed interveners' knowledge of another's position that implicates their own provides constructive notice for Rule 24 purposes). Despite knowing that its purported interest in Skapa was at risk for over two years and had constructive knowledge of suits against Skapa for over a year, six months passed in which it—knowing that a suit was likely—could have reviewed the superior court docket to intervene at an earlier time. *See id.* at 390–91 (finding intervention untimely based, in part, on the fact that the related

litigation's "complaint and other filings . . . are publicly available for anyone to access"). Under these circumstances, the trial court did not abuse its discretion in finding that JMP did not justify why it had not sought intervention earlier or defended its interest in the declaratory judgment proceeding and therefore did not err in denying its motion to intervene. *See One Cessna 206 Aircraft,* 118 Ariz. at 401. Because JMP failed to justify its untimely motion, we need not address the merits of the claims under either Rule 24(a)(2) or Rule 24(b). *See id*.

II. Denial of Motion to Set Aside

¶19 The trial court did not err in denying JMP's motion to set aside judgment as being untimely. Under Arizona Rule of Civil Procedure 60, a motion to set aside a default judgment "must be made within a reasonable time." Ariz. R. Civ. P. 60(c). As stated above, JMP had constructive knowledge of the litigation and that Skapa was not defending its interests. For the reasons that made JMP's motion to intervene untimely, JMP's motion to set aside was similarly not made "within a reasonable time."

CONCLUSION

¶20 Both parties move for attorneys' fees and costs under A.R.S. §§ 12–341 and –341.01. We deny JMP's attorneys' fees and costs on appeal. As the prevailing party, however, we grant CSL its reasonable attorneys' fees and costs in compliance with ARCAP 21. For the reasons stated, we affirm.

AMY M. WOOD • Clerk of the Court
FILED: AA