

NOTICE: THIS DECISION DOES NOT CREATE LEGAL PRECEDENT AND MAY NOT BE CITED
EXCEPT AS AUTHORIZED BY APPLICABLE RULES.
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE



DIVISION ONE
FILED: 07/28/2011
RUTH A. WILLINGHAM,
CLERK
BY: DLL

WELLS FARGO BANK, N.A.,) 1 CA-CV 10-0621
)
Plaintiff/Judgment Creditor/)
Appellee,) DEPARTMENT A
v.) **MEMORANDUM DECISION**
) (Not for Publication -
STREAM GLOBAL SERVICES, INC.,) Rule 111, Rules of the
) Arizona Supreme Court)
Garnishee/Appellant.)
_____)

Appeal from the Superior Court of Maricopa County

Cause No. CV2009-029957

The Honorable Jay L. Davis, Commissioner

AFFIRMED

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By Lawrence E. Palles
Attorneys for Garnishee/Appellant

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By Polly S. Rapp
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T H O M P S O N, Judge

¶1 Stream Global Services, Inc. (Stream Global) appeals the trial court's denial of its motion for relief from judgment pursuant to Arizona Rule of Civil Procedure 60(c) (Rule 60(c)).

For the reasons that follow, we affirm.

FACTUAL AND PROCEDURAL HISTORY

¶2 Ezrapet Karamian (Karamian) and her husband, Albert Schaverdian (Schaverdian), took out a home equity loan for \$49,500 with Wells Fargo Bank (Wells Fargo) in 2006. Karamian and Schaverdian defaulted on the loan after making one payment. In 2009, Wells Fargo filed a complaint in superior court against Karamian and Schaverdian alleging claims of breach of contract and unjust enrichment. Karamian and Schaverdian were served with the complaint but failed to answer. Wells Fargo filed an application for entry of default, and Karamian and Schaverdian again failed to answer. Wells Fargo filed a motion for entry of default and the trial court entered a default judgment against Karamian and Schaverdian.

¶3 In December 2009, Wells Fargo filed an application for issuance of writ of garnishment seeking to garnish Karamian's wages at Etelecare Global Solutions AZ, Inc. (Etelecare). The writ was served on Etelecare in December 2009, but Etelecare did not respond. Wells Fargo filed a petition for order to show cause for failure to answer the writ. The trial court issued the order to show cause, which ordered an officer or owner of Etelecare to either answer the writ or appear for a hearing. The order was served on Etelecare but Etelecare failed to answer the writ or appear at the hearing. On March 18, 2010, the trial

court entered a default judgment against Etelecare, and Wells Fargo subsequently garnished a Wells Fargo account owned by Etelecare in April 2010.

¶4 Stream Global, which acquired Etelecare's parent company in October 2009, filed a motion for relief from judgment pursuant to Rule 60(c). The trial court denied the motion for relief from judgment and entered judgment on garnishment against Etelecare's Wells Fargo account in the amount of \$59,453.45. Stream Global timely appealed. We have jurisdiction.

DISCUSSION

¶5 On appeal, Stream Global argues that the trial court abused its discretion 1) by failing to resolve any doubts in favor of the defaulted party; 2) by applying a heightened standard rather than applying a more liberal standard of Rule 60(c) relief to it as a defaulted garnishee; and 3) by failing to remedy a "gross injustice" that occurred when Wells Fargo was allowed to garnish Stream Global in the amount of \$59,453.45 even though Stream Global held just \$244.21 of Karamian's wages.

¶6 Arizona Rule of Civil Procedure 55(c) allows the court to set aside a judgment of default pursuant to Rule 60(c). Rule 60(c) provides, in relevant part:

On motion and upon such terms as are just the court may relieve a party or a party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise

or excusable neglect; . . . (6) any other reason justifying relief from the operation of the judgment.

We assume, for the sake of argument, that the trial court should show more liberality in setting aside a judgment against a defaulting garnishee than in setting aside judgment against a defaulting defendant. *Gutierrez v. Romero*, 24 Ariz. 382, 387, 210 P. 470, 472 (1922) ("court should be even more liberal in allowing belated garnishee to answer after default than in granting the privilege to an ordinary suitor defaulter, since he is a disinterested party in the proceedings, so far as any prospect of being benefited is concerned, yet an interested third person so far as the danger of being injured is concerned."). On appeal, we will presume that the judgment was correct and will not disturb the judgment absent a clear abuse of discretion. *General Elec. Cap. Corp. v. Osterkamp*, 172 Ariz. 191, 194, 836 P.2d 404, 407 (App. 1992).

¶7 In this case, Stream Global sought relief under Rule 60(c)(1), arguing excusable neglect, and Rule 60(c)(6), the catchall provision. Stream Global attached the affidavit of Wendy Ellis, its human resources director, to its motion for relief from default judgment. In her affidavit, Ms. Ellis stated that Stream Global acquired Etelecare in October 2009, and that

[d]uring the activity associated with this

restructuring in late 2009 and early 2010, the Writ of Garnishment was either not received by the appropriate person within Stream [Global] or was overlooked in the transition activity. Similarly, the Court's February 3, 2010 Order to Show Cause was also not received by the appropriate person or overlooked.

¶8 After hearing oral argument, the trial court found that the evidence presented by Stream Global did not satisfy the standard of excusable neglect. The trial court additionally found that there was not an extraordinary injustice in upholding the garnishment.¹

¶9 We find no clear abuse of discretion. Etelecare failed to respond to two formal notices served upon its statutory agent regarding the garnishment in this case. First, it failed to respond to the writ of garnishment served in December 2009; next, it failed to answer the writ of garnishment or appear after the court ordered it to do so. Excusable neglect requires more than mere office confusion. *Daou v. Harris*, 139

¹ The court stated, "However, looking at 60(c)(6) although the outcome of this case as it's going to turn out will certainly be harsh in terms of dollars [sic] amounts, as pointed out by Mr. Sloan, your company is not a mom and pop operation. We're not going to be sending any kids into the streets. So I'm hard pressed to find that there was an injustice promulgated, if the Court should rule against Etelecare in this matter. Basically there was no hurricane Katrina. There was no oil spill. There was no evidence brought out to indicate as far as 60(c)(1) that the neglect, and certainly there was neglect, was excusable. I do not find . . . evidence of extraordinary injustice in this matter. Therefore I'm going to grant the judgment on garnishment as submitted by the parties in this matter."

Ariz. 353, 359, 678 P.2d 934, 940 (1984); *Safeway Stores, Inc. v. Ramirez*, 1 Ariz. App. 117, 121, 400 P.2d 125, 129 (1965). The trial court reasonably found that the Ellis affidavit concerning company restructuring did not establish excusable neglect. The affidavit was unspecific and described in general terms a corporate merger that took place two months before the company was served with the writ of garnishment. Nor do we agree with appellant that the trial court held it to a higher standard of excusable neglect. Furthermore, Arizona law allows for a default judgment to be entered against a garnishee in the full amount of the judgment if a garnishee fails to answer the writ and respond to the order to show cause. A.R.S. § 12-1598.13 (H) (2003). With regard to the catchall provision of Rule 60(c)(6), it was within the trial court's discretion to rule against Stream Global. The trial court did not err when it determined that there was not enough of an injustice to justify setting aside the garnishment under Rule 60(c)(6).

¶10 For the foregoing reasons, we affirm the trial court's

decision denying Stream Global's motion for relief from judgment.

/s/

JON W. THOMPSON, Judge

CONCURRING:

/s/

DIANE M. JOHNSEN, Presiding Judge

/s/

MARGARET H. DOWNIE, Judge