STATE OF MICHIGAN

COURT OF APPEALS

PERFECT SERVICES GROUP, INC., Plaintiff-Appellee,	UNPUBLISHED July 2, 1999
v	No. 209574 Oakland Circuit Court
SONY ELECTRONICS, INC., Defendant-Appellant.	LC No. 97-000113 CK

Before: Zahra, P.J., and Saad and Collins, JJ.

PER CURIAM.

Defendant appeals as of right from an order denying its motion to set aside the entry of a default and default judgment. We reverse and remand for further proceedings.

I

Defendant argues that the trial court erroneously denied its motion to set aside the entry of default and default judgment where plaintiff served notice of the proceeding on defendant's counsel, Nehs. We agree that both the default and default and default judgment should have been set aside.

A trial court's decision to set aside or not set aside the entry of a default will not be reversed on appeal absent a clear abuse of discretion. *Park v American Casualty Ins*, 219 Mich App 62, 66; 555 NW2d 720 (1996). A party against whom a default or default judgment has been entered may be relieved from the same if good cause is shown and an affidavit of facts illustrating a meritorious defense is filed. MCR 2.603(D)(1). This Court, in *Park, supra*, 219 Mich App 67, described "good cause" as follows:

> Good cause sufficient to warrant setting aside a default or a default judgment includes: (1) a substantial defect or irregularity in the proceeding on which the default is based, (2) a reasonable excuse for the failure to comply with requirements that created the default, or (3) some other reason showing that manifest injustice would result if the default or default judgment were allowed to stand.

Here, defendant claims a substantial defect in the proceedings, namely that plaintiff failed to provide defendant with proper notice of the default. We agree.

Defendant contends that its counsel had not appeared in the action, and that plaintiff was accordingly obligated to serve defendant in accordance with MCR 2.603(A)(2). Plaintiff agrees that there was no appearance, but instead argues that its service on Nehs satisfied the notice requirement, because this was sufficient to alert defendant to the proceedings.

MCR 2.603(A)(2) provides:

> Notice of the entry must be sent to all parties who have appeared and to the defaulted party. *If the defaulted party has not appeared, the notice to the defaulted party may be served by personal service . . .* [Emphasis added.]

There is no Michigan court rule or statute which defines or specifies what actions are necessary to constitute an "appearance" under this rule. *Ragnone v Wirsing*, 141 Mich App 263, 265; 367 NW2d 369 (1985). The *Ragnone* Court held that "'any action on the part of defendant, except to object to the jurisdiction over his person which recognizes the case as in court, will constitute a general appearance.'" *Id.*, 265, quoting 6 CJS, Appearances, § 19, p 24.

Here, Nehs' and Hyman's minimal contacts with plaintiff's counsel regarding settlement and requests for extension do not constitute "recogni[tion of] the case in court." Indeed, plaintiff itself does not maintain that these contacts qualify as an appearance within the meaning of the court rule, but instead contends that service on the attorney was acceptable because the "purpose" of the notice requirement was fulfilled. This argument is without merit. The court rules objectively set forth requirements for serving notice of a default, and a litigant cannot evade these requirements upon a subjective showing that the "purpose" of the rule has been addressed.

Plaintiff cites *Harvey Cadillac Co v Rahain*, 204 Mich App 355; 514 NW2d 257 (1994), in support of its argument that compliance with the rule is not strictly necessary. Plaintiff alleges that in *Harvey Cadillac*, this Court held that the notice requirement was satisfied where the plaintiff served notice on the defendant's "former counsel". Plaintiff reads too much into *Harvey Cadillac*. Although the opinion makes reference to the "former counsel", nothing in the opinion states or suggests that this attorney had yet discontinued representing the defendant at the time the default was served. Accordingly, we conclude that plaintiff cannot satisfy the notice requirement by serving the default on an attorney who has not made an appearance on behalf of a defendant, even where the attorney maintains some degree of professional contact with the defendant.

In *Perry v Perry*, 176 Mich App 762, 770; 440 NW2d 93 (1989); *Vaillencourt v Vaillencourt*, 93 Mich App 344, 350; 287 NW2d 230 (1979), we held that the notice provision with respect to requests for default judgments, MCR 2.603(B)(1), is a mandatory provision, and that noncompliance constitutes the denial of due process, requiring that the default judgment be set aside.

We also held that when there is noncompliance with MCR 2.603(B), the requirements of MCR 2.603(D) do not need to be met in order for the defaulted party to prevail in an action to have the default judgment set aside. By analogy, the notice provision for entry of defaults provided by MCR 2.603(A) is also a mandatory provision. Accordingly, we hold that defendant does not need to satisfy the requirements of MCR 2.603(D) to have the default and default judgment set aside. In any event, defendant has demonstrated a meritorious defense in addition to good cause. MCR 2.603(D)(1). Defendant's affidavit regarding plaintiff's misfeasance in performing its contract alleges facts which, if proved true, would reduce or possibly eliminate defendant's liability for the alleged breach of contract.

Reversed and remanded to the trial court for further proceedings. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Jeffrey G. Collins