

STATE OF MICHIGAN
COURT OF APPEALS

ERIC ALCORN,

Plaintiff-Appellee,

v

CENTRAL CONTAINER CORP., TOROSIAN
TECH SERVICES, INC., TOM SECORD, JOHN
DOE, GRAND TRAVERSE CONTAINERS,
INC., JOHN DOE CORP., and LATITUDE
MACHINERY CORP.,

Defendants,

and

TIEN CHIN YU MACHINERY
MANUFACTURING COMPANY, LTD.,

Defendant-Appellant.

UNPUBLISHED
January 12, 2016

No. 323940
Grand Traverse Circuit Court
LC No. 11-028683-NO

Before: RONAYNE KRAUSE, P.J., and GADOLA and O'BRIEN, JJ.

PER CURIAM.

Defendant Tien Chi Yu Machinery Manufacturing Company, Ltd. appeals as of right the circuit court's July 23, 2014 order entering a \$1,574,000 default judgment against it and in favor of plaintiff, Eric Alcorn. We reverse and remand for further proceedings.

Plaintiff was injured when his hand became stuck in a high-speed cardboard folding machine known as the Mini Flexo during the course of his employment with Grand Traverse Containers, Inc. (GTC). The Mini Flexo was allegedly designed, manufactured, and produced by Tien Chi Yu Machinery Manufacturing Company, Ltd. (TCY) and sold to Central Container Corporation (CCC). Torosian Technical Services, Inc. (TTS) was hired by GTC to disassemble, ship, and install the Mini Flexo, and Tom Secord (Secord) was hired to maintain the Mini Flexo after it was installed.

Plaintiff initially sued CCC, TTS, and Secord, alleging negligence and gross negligence for their role in the maintenance of the Mini Flexo. All three of those defendants eventually filed notices pursuant to MCR 2.112(K), asserting that TCY and Latitude Machinery Corporation (LMC), at the time non-parties, may be liable for plaintiff's injuries. Plaintiff amended his complaint accordingly, alleging negligence and gross negligence against TCY and LMC. This matter was then stayed for six months to provide plaintiff time to serve TCY and LMC as both companies are based in Taiwan.

In response, Hsiao, Cheng-Nan (Hsiao), TCY's chairman, filed what purported to be an answer to plaintiff's amended complaint. According to the filing, "LMC is run by Defendant TCY's former general manager Mr. Hsiao, Min-Lan," who "was convicted of breach of trust due to illegally take away [sic] Defendant TCY's design charts and other documents when he left Defendant TCY in 2002." While Hsiao indicated that he "strongly suspects" that TCY designed, manufactured, and produced the Mini Flexo, he indicated that he could not say one way or the other with certainty. Plaintiff moved to strike TCY's answer, arguing that it should not be considered by the circuit court because, as a corporation, TCY was required to be represented by an attorney. In response, TCY answered that, pursuant to the Taiwan Code of Civil Procedure, an attorney was not required. The circuit court denied plaintiff's motion.

Over the next several months, Hsiao filed various responses to discovery requests that were made by plaintiff. Generally, Hsiao asserted that TCY had no witnesses regarding this matter, had no documents regarding this matter, and made various statements regarding LMC's potential involvement. TCY did not attend any hearings or hire an attorney licensed to practice in Michigan during this time. After failing to comply with various aspects of the scheduling order, plaintiff moved for, and the circuit court eventually entered, a default judgment against TCY in the amount of \$1,574,000.¹ Hsiao thereafter filed a motion to set aside the default judgment, but that motion was denied.

Two months later, now represented by attorneys licensed and located in Michigan, TCY moved to set aside the default judgment, for relief from judgment, and for summary disposition. TCY argued that it was entitled to summary disposition and that the default judgment should be set aside because the circuit court lacked personal jurisdiction over TCY. In response, plaintiff argued that TCY waived personal jurisdiction by not raising it in its initial pleadings and consented to personal jurisdiction by filing various responses to his discovery requests before the circuit court pursuant to MCR 2.116(D)(1). TCY contended that, despite the fact that it had attempted to file various documents before the circuit court, all of those filings were void because they were drafted by Hsiao, not an attorney. The circuit court denied TCY's motions, concluding that, pursuant to MCR 2.116(D)(1), TCY had waived and consented to personal jurisdiction through Hsiao's consistent involvement in this matter. This appeal followed.

¹ The circuit court also entered a default judgment against LMC in the same amount. The remaining defendants either successfully moved for summary disposition or stipulated to a dismissal after settling with plaintiff.

On appeal, TCY argues that the circuit court erred in denying its motion to set aside the default judgment on the grounds that TCY waived or consented to personal jurisdiction. We agree.

A circuit court's ruling on a motion to set aside a default judgment will only be reversed when there has been a clear abuse of discretion. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 227; 600 NW2d 638 (1999). "[T]he law favors the determination of claims on the merits[.]" *Id.* at 229. Thus, default judgments are not favored. *Saffian v Simmons*, 477 Mich 8, 15; 727 NW2d 132 (2007); *Lawrence M Clarke, Inc v Richco Constr, Inc*, 489 Mich 265, 273, n 3; 803 NW2d 151 (2011). In denying TCY's motion to set aside the default judgment, the circuit court relied on MCR 2.603(D)(1), which provides as follows: "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."

Specifically, the circuit court denied TCY's motion to set aside the default judgment on the grounds that it, through Hsiao's actions, either waived or consented to personal jurisdiction. "[A] valid judgment affecting a nonresident's rights or interests may only be entered by a court having personal jurisdiction over that defendant." *Jeffrey v Rapid American Corp*, 448 Mich 178, 185; 529 NW2d 644 (1995), citing *Int'l Shoe v Washington*, 326 US 310, 319; 66 S Ct 154; 90 L Ed 95 (1945). "[I]ssues related to jurisdiction over persons and property as well as service of process must be raised in a responsive pleading or by motion, whichever comes first." *Stanke v State Farm Mut Auto Ins Co*, 200 Mich App 307, 319; 503 NW2d 758 (1993). However, a corporate defendant must appear before the circuit court represented by counsel. *Detroit Bar Ass'n v Union Guardian Trust Co*, 282 Mich 707, 711; 281 NW2d 432 (1938); *Peters Prod, Inc v Desnick Broadcasting Co*, 171 Mich App 283, 287; 171 NW2d 654 (1988); *Fraser Trebilock Davis & Dunlap PC v Boyce Trust 2350*, 497 Mich 265, 277; 870 NW2d 494 (2015). Here, prior to moving to set aside the default judgment, for relief from the default judgment, and for summary disposition, TCY did not appear before the circuit court represented by counsel. While it is true that Hsiao filed various documents purportedly on behalf of TCY before the circuit court that did not raise a personal jurisdiction challenge, those documents were not signed by an attorney licensed to practice law in Michigan and should have been struck from the record. *Detroit Bar Ass'n*, 282 Mich at 711; *Peters Prod, Inc*, 171 Mich App at 287. Thus, TCY raised this personal jurisdiction challenge in its first filing before the circuit court. *Stanke*, 200 Mich App at 319. TCY also did not consent to personal jurisdiction by filing those documents for the same reasons. We find persuasive *Fleet Capital Leasing-Technology Fin v Seal Jet of Carolinas, Inc*, 358 SC 240, 244-245; 594 SE2d 538 (2004), a case where the South Carolina Supreme Court, applying Michigan law, held that "a person who is legally incapable of representing a corporation in a court proceeding . . . cannot bind the corporation by his actions." In that case, the South Carolina Supreme Court concluded that a filing made by the president of a corporation that should have been struck could not be used to establish that the corporation made a general appearance for jurisdictional purpose. *Id.* at 245. The same is true in this case.

Accordingly, we conclude that the circuit court committed a clear abuse of discretion in denying TCY's motion to set aside the default judgment. We therefore reverse its September 16, 2014 order and remand this matter for further proceedings consistent with this opinion. To the extent TCY raises arguments relating to the merits of its underlying personal jurisdiction

challenge and whether it otherwise demonstrated good cause to set aside the default judgment, we need not address those at this time because they were not decided by the circuit court. See *Allen v Keating*, 205 Mich App 560, 564; 517 NW2d 830 (1994). While the circuit court made various comments as to the strengths and weaknesses of each, its decision was based solely on the erroneous conclusion that TCY waived or consented to personal jurisdiction.

Reversed and remanded. We do not retain jurisdiction. Defendant TCY, being the prevailing party, may tax costs pursuant to MCR 7.219.

/s/ Amy Ronayne Krause

/s/ Michael F. Gadola

/s/ Colleen A. O'Brien