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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1579**

Capital Trust Federal Credit Union,
Respondent,

vs.

Lonny Richard Stavig,
Appellant.

**Filed May 3, 2011
Affirmed
Kalitowski, Judge**

Ramsey County District Court
File No. 62-CV-08-9992

Daniel W. Fram, Daniel M. Duffek, Peterson, Fram & Bergman, P.A., St. Paul,
Minnesota (for respondent)

John. G. Westrick, Kristian L. Oyen, Westrick & McDowall-Nix, P.L.L.P., St. Paul,
Minnesota (for appellant)

Considered and decided by Worke, Presiding Judge; Kalitowski, Judge; and
Shumaker, Judge.

UNPUBLISHED OPINION

KALITOWSKI, Judge

In this appeal from the district court's order requiring appellant Lonny Richard Stavig to post a bond in the amount of \$22,685.28 before vacating the default judgment

against him, appellant argues that the bond requirement is not supported by the record and is not just. We affirm.

D E C I S I O N

Between 2001 and 2006, appellant, as an individual and through his used-car dealership, took out loans from respondent Capital Trust Federal Credit Union to purchase cars, which appellant resold. In August 2006, appellant filed for Chapter 7 bankruptcy. Respondent brought an adversary action in the bankruptcy proceeding, claiming that appellant's debts to respondent could not be discharged because they were obtained by false pretenses, false representation, or fraud, or used to cause willful injury. The federal bankruptcy court agreed and did not discharge these debts.

Respondent then commenced a lawsuit against appellant in state court, alleging breach of contract; fraud, misrepresentation, and deceit; and willful injury and conversion. Respondent requested damages and a declaration allowing it to pierce the corporate veil. Appellant filed an answer but failed to appear for a pretrial settlement conference. The district court entered default judgment and calculated damages, interest, fees, and costs owed by appellant to be \$226,852.84 based on respondent's complaint and supporting documents. Appellant moved the district court to vacate the default judgment, stating that his failure to appear was the result of a miscommunication with his new attorney. The district court concluded that vacating the default judgment was justified but required appellant to pay respondent's costs, disbursements, and attorney fees and to post a bond for ten percent of the judgment amount. Appellant challenges only the bond requirement.

A party may move the district court for relief from a final judgment on the ground of “[m]istake, inadvertence, surprise, or excusable neglect.” Minn. R. Civ. P. 60.02(a). Whether to grant such a motion is discretionary with the district court, and its decision will not be reversed unless the district court clearly abused its discretion. *Riemer v. Zahn*, 420 N.W.2d 659, 661 (Minn. App. 1988). The rules of civil procedure specifically authorize district courts to grant relief from a final judgment “upon such terms as are just.” Minn. R. Civ. P. 60.02. And the district court can condition orders vacating a final judgment on the continuation of some security for the judgment creditor. *Nielsen, Stock & Blackburn, Ltd. v. Fin. Acceptance Corp. of Minn.*, 299 Minn. 81, 85, 216 N.W.2d 693, 696 (1974).

In approving bond requirements, reviewing courts have emphasized the broad discretion afforded the district court and the need to protect the judgment creditor from potential prejudice, particularly in the face of allegations that the party in default is trying to escape payment or is in financial distress. *Finden by Finden v. Klaas*, 268 Minn. 268, 272, 128 N.W.2d 748, 751 (1964); *Johnson v. Nelson*, 265 Minn. 71, 73-74, 120 N.W.2d 333, 335-36 (1963); *Banque Internationale Luxembourg v. Dacotah Cos.*, 413 N.W.2d 850, 853-54 (Minn. App. 1987); *Valley View, Inc. v. Schutte*, 399 N.W.2d 182, 186 (Minn. App. 1987), *review denied* (Minn. Mar. 18, 1987).

Here, the record supports the district court’s decision to require a bond before vacating the default judgment. Appellant attempted to discharge his debts, including approximately \$182,000 that his business owed respondent as of August 2006, and admitted that the bankruptcy court refused to discharge these debts under the exceptions

in the federal bankruptcy statutes for fraud and willful injury. Appellant also stated in an affidavit that he submitted to the district court that he was in financial distress. These facts indicate that appellant may be unable to satisfy a judgment against him and may try to escape payment.

Appellant's argument that the bond is not just because he alleges that he is financially unable to obtain it is unavailing. The amount of the bond here is less than and represents a smaller percentage of damages than other bonds that reviewing courts have upheld. See *Johnson*, 265 Minn. at 73-74, 120 N.W.2d at 335-36; *Banque Internationale Luxembourg*, 413 N.W.2d at 853-54; *Juhl v. Rose*, 366 N.W.2d 706, 707 (Minn. App. 1985). The fact that appellant may be unable to obtain a bond for ten percent of the default-judgment amount portends precisely the prejudice that the bond is intended to protect against. We conclude that the district court did not abuse its discretion by requiring appellant to post a bond of \$22,685.28.

Affirmed.