

**THE COURT OF APPEALS
ELEVENTH APPELLATE DISTRICT
LAKE COUNTY, OHIO**

BANK ONE, NA,	:	OPINION
Plaintiff-Appellant,	:	
- vs -	:	CASE NO. 2003-L-048
SKRL TOOL AND DIE, INC., et al.,	:	
Defendants-Appellees.	:	

Civil appeal from the Court of Common Pleas, Case No. 01 CV 001449.

Judgment: Affirmed.

Isaac Schulz and Christopher P. Fisher, 1300 East Ninth Street, Suite 900, Cleveland, OH 44114 (For Plaintiff-Appellant).

Robert W. McIntyre, Robert R. Kracht, and Scott J. Dean, The Galleria and Towers at Erieview, 1301 East Ninth Street, Suite 1200, Cleveland, OH 44114 (For Defendants-Appellees).

WILLIAM M. O'NEILL, J.

{¶1} In this accelerated calendar case, appellant, Bank One, NA (“Bank One”), appeals the judgment entered by the Lake County Court of Common Pleas. The trial court granted a motion for relief from judgment filed by appellees, SKRL Tool and Die, Inc.; SKRL Die Casting, Inc.; SKRL Design, Inc.; SKRL Realty, Inc.; Olga Skrlj; Gene Szych; and Sandra Graham (together “SKRL”).

{¶2} SKRL is a manufacturing business located in Lake County. SKRL has been in business for nearly fifty years. Throughout SKRL's existence, the General Motors Corporation ("GM") has been its primary customer.

{¶3} In 1996, SKRL entered into a loan agreement with Bank One. This agreement included a \$3 million line of credit and a \$600,000 term loan. In 1998, SKRL entered into an agreement with GM to produce new parts for its vehicles. As a result, SKRL needed additional funding to purchase new machinery to produce the new parts for GM. In late 1998 and July 1999, Bank One agreed to restructure the loan agreement.

{¶4} SKRL claims Bank One breached the loan agreement in 2000, resulting in a lack of funds for SKRL to operate its business. GM became aware of SKRL's financial situation and terminated all of its contracts with SKRL. Following the termination of the GM contracts, SKRL did not have enough money to pay its financial obligations, including the Bank One loans.

{¶5} On September 20, 2001, Bank One filed a cognovit complaint against SKRL. In a judgment entry filed the same day, the trial court entered a cognovit judgment against SKRL, in favor of Bank One, in an amount totaling in excess of \$3,500,000. This award included unpaid principal and interest on the 1996 loans and provided for additional interest to accrue.

{¶6} In April 2002, a stipulated order for appointment of receiver was filed. This pleading appointed Larry Goddard of the Parkland Group, Inc. receiver for SKRL. In addition, this pleading acknowledged that the parties had entered into a forbearance agreement in March 2002.

{¶7} In May 2002, SKRL filed a motion for relief from judgment pursuant to Civ.R. 60(B). The trial court held an in-chambers hearing on the motion and heard arguments from the attorneys. No court reporter was present for the majority of this hearing. However, there is a transcript of a brief portion of the hearing, where the parties stipulated to the admission of certain exhibits. Following the hearing, the trial court permitted the parties to submit post-hearing briefs. Thereafter, the trial court granted SKRL's motion for relief from judgment.

{¶8} Bank One raises one assignment of error:

{¶9} "The trial court erred when it granted relief from judgment to SKRL."

{¶10} "The cognovit note is a legal device whereby the debtor consents, in advance, to the creditor obtaining a judgment without notice or hearing."¹ In Ohio, R.C. 2323.13(A) provides the statutory authority for cognovit notes.²

1. *Badalamenti v. Natl. City Bank*, 11th Dist. No. 2001-P-0122, [2002-Ohio-4815](#), at ¶14, citing *D.H. Overmyer Co., Inc., of Ohio v. Frick Co.* (1972), 405 U.S. 174, 176.

2. *Id.* at ¶16.

{¶11} Relief from judgment may be granted pursuant to Civ.R. 60(B), which states, in part:

{¶12} “On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment.”

{¶13} Generally, “[t]o prevail on a motion brought under Civ.R. 60(B), the movant must demonstrate that: (1) the party has a meritorious defense or claim to present if relief is granted; (2) the party is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5); and (3) the motion is made within a reasonable time, and, where the grounds of relief are Civ.R. 60(B)(1), (2), or (3), not more than one year after the judgment, order or proceeding was entered or taken.”³

{¶14} However, the burden necessary to prevail on a motion for relief from a cognovit judgment is less stringent. The movant only needs to show that the motion was timely filed and that they have a meritorious defense to present.⁴

3. *GTE Automatic Electric v. ARC Industries* (1976), 47 Ohio St.2d 146, at paragraph two of the syllabus.

4. *Natl. City Bank v. Concorde Controls, Inc.*, 11th Dist. No. 2001-L-113, [2002-Ohio-6578](#), at ¶17, citing *Davidson v. Hayes* (1990), 69 Ohio App.3d 28.

{¶15} A reviewing court reviews a trial court’s decision on a motion for relief from judgment to determine if the trial court abused its discretion.⁵ “The term ‘abuse of discretion’ connotes more than an error of law or judgment; it implies that the court’s attitude is unreasonable, arbitrary or unconscionable.”⁶

{¶16} “For purposes of a successful motion for relief from a judgment obtained by cognovit note, where relief is pursued in a timely manner and in light of a proper allegation of a meritorious defense, any doubt should be resolved in favor of setting aside the judgment so that the case may be decided on the merits.”⁷

{¶17} First, we will consider if the trial court abused its discretion by concluding that SKRL’s motion to dismiss was timely filed. Whether a Civ.R. 60(B) motion is timely filed is dependant on the facts of the case.⁸ Bank One does not challenge the trial court’s finding regarding the timeliness of the motion. We note that SKRL’s Civ.R. 60(B) motion was filed about seven months after the cognovit judgment was entered. However, the trial court found that the motion was timely due, in part, to SKRL’s assertion that the delay was caused by an alleged dual representation by Calfee, Halter & Griswold, Bank One’s trial counsel. The trial court did not abuse its discretion by finding that SKRL’s motion for relief from judgment was timely filed.

{¶18} Next, we will determine if the trial court abused its discretion by determining that SKRL had a meritorious defense. The movant does not need to prove

5. *Advanced Clinical Mgt., Inc. v. Salem Chiropractic Ctr., Inc.*, 5th Dist. No. 2003CA00108, [2004-Ohio-120](#), at ¶10, citing *Griffey v. Rajan* (1987), 33 Ohio St.3d 75, 77.

6. *Blakemore v. Blakemore* (1983), 5 Ohio St.3d 217, 219.

7. *Advanced Clinical Mgt., Inc. v. Salem Chiropractic Ctr., Inc.*, supra, at ¶16, citing Civ.R. 60(B).

8. *Oberkonz v. Gosha*, 10th Dist. No. 02AP-237, [2002-Ohio-5572](#), at ¶26, citing *Orth v. Inman*, 10th Dist. No. 99AP-504, [2002-Ohio-3728](#), at ¶24.

that he will ultimately prevail on the asserted defense. Rather, he need only allege a meritorious defense.⁹

{¶19} In its motion for relief from judgment, SKRL alleged the meritorious defenses of: breach of contract, promissory estoppel, fraud, negligent misrepresentation, waiver, and equitable estoppel. The trial court found that SKRL had alleged a meritorious defense of equitable estoppel. The trial court did not address the remaining defenses.

{¶20} “Equitable estoppel prevents relief when one party induces another to believe certain facts exist and the other party changes his position in reasonable reliance on those facts to his detriment.”¹⁰ Generally, equitable estoppel requires actual or constructive fraud.¹¹ The Supreme Court of Ohio has held that equitable estoppel is to be determined on the particular facts of the case before the court.¹²

{¶21} In its motion for relief from judgment, SKRL claimed that, based on Bank One’s written promises for additional financing, it spent nearly \$2 million to purchase additional equipment in anticipation of the new GM contract. Thereafter, Bank One failed to provide the additional funding, resulting in GM backing out of its contracts with SKRL. SKRL argued it did not have the money to repay the underlying note to Bank One, because SKRL did not have the additional revenue from the GM contract(s).

9. *Badalamenti v. Natl. City Bank*, [2002-Ohio-4815](#), at ¶17, citing *Meyers v. McGuire* (1992), 80 Ohio App.3d 644, 646.

10. *Chubb v. Ohio Bur. of Workers’ Comp.* (1998), 81 Ohio St.3d 275, 279, quoting *State ex rel. Chavis v. Sycamore City School Dist Bd. of Edn.* (1994), 71 Ohio St.3d 26, 34.

11. *Chavis v. Sycamore City School Dist Bd. of Edn.*, 71 Ohio St.3d at 35, citing *State ex rel. Richard v. Bd. of Trustees of Police & Firemen’s Disability & Pension Fund* (1994), 69 Ohio St.3d 409, 414.

12. *In re Election of November 6, 1990 for the Office of Attorney General of Ohio* (1991), 58 Ohio St.3d 103, 113, citing *Hampshire Cty. Trust Co. v. Stevenson* (1926), 114 Ohio St. 1, 11.

{¶22} Bank One asserts that SKRL is not permitted to assert these defenses because the restructuring agreements contained exculpatory clauses, wherein SKRL allegedly waives all claims or defenses against Bank One. Civ.R. 60(B) only requires the movant to allege a meritorious defense. SKRL was not required to anticipate every rebuttal argument that Bank One might raise in respect to its proposed meritorious defense.

{¶23} Based upon the facts before it, the trial court concluded that SKRL alleged the meritorious defense of equitable estoppel to warrant the granting of its Civ.R. 60(B) motion. The trial court did not abuse its discretion in finding that SKRL alleged a meritorious defense.

{¶24} Bank One's assignment of error is without merit.

{¶25} The judgment of the trial court is affirmed.

Judgment affirmed.

DIANE V. GRENDALL and CYNTHIA WESTCOTT RICE, JJ., concur.