

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

CITY OF EASTPOINTE, a Michigan municipal corporation,

Plaintiff,

vs.

Case No. 2013-3691-CH

GLENDALE/RIVERVIEW ASSOCIATES, LLC and PETER ADAMO,

Defendants.

OPINION AND ORDER

Defendants have filed a motion to set aside default judgment. Plaintiff has filed a response seeking denial of the motion.

Factual and Procedural History

On September 13, 2013, Plaintiff filed its complaint in this matter seeking to quiet title to certain real property known as 24211 and 24200 Gratiot Ave., St. Clair Shores, MI (the “Subject Property”). Plaintiff also stated a claim for slander of title.

On September 27, 2013, Plaintiff filed a proof of service providing that Defendant Peter Adamo (“Defendant Adamo”) was served with the summons and complaint on September 24, 2013 and that Defendant Glendale/Riverview Associates LLC (“Defendant Glendale”) was served with the summons and complaint on September 21, 2013. Accordingly, Defendant Adamo was required to file an answer no later than October 15, 2013 and Defendant Glendale was required to file an answer no later than October 14, 2013. *See* MCR 2.108(A)(1). On October 16, 2013, a default was entered against Defendant Adamo based on his failure to timely

answer the complaint. On the same day, Defendant Adamo filed an answer. However, the answer was rejected in light of the fact that a default had already been entered.

On October 25, 2013, Plaintiff filed a motion for entry of a default judgment against Defendants. On November 4, 2013, the Court entered a default judgment against Defendants due to Defendants' failure to file a response, appear at the hearing or otherwise defend against the motion.

On December 3, 2013, Defendants filed the instant motion to set aside the default judgment. On December 6, 2013, Plaintiff filed its response to the motion.

On December 16, 2013, Plaintiff filed a "Motion to re-open case, enter default against Defendant Glendale/Riverview Associates LLC and to re-enter default judgment." On December 23, 2013, the Court held a hearing on Plaintiff's motion. Defendants once again failed to appear at the hearing. As a result, the Court granted Plaintiff's motion and entered a default against Defendant Glendale.

On January 2, 2014, Plaintiff filed a motion to re-enter default judgment/final order. On January 13, 2014, the date set for a hearing on Plaintiff's January 2, 2014 motion, Defendants' counsel appeared for the first time since filing Defendants' December 3, 2013 motion to set aside the default judgment. At the hearing, the Court heard oral arguments on Defendants' motion to set aside. At the conclusion of the hearing, the Court took the matter under advisement. The Court has reviewed the pleadings, and arguments at oral argument, and is now prepared to make its decision.

Standard of Review

A motion to set aside a default or a default judgment is generally to be granted only if the movant shows good cause and files an affidavit of meritorious defense. MCR 2.603(D)(1).

Good cause consists of: (1) a procedural defect or irregularity; or (2) a reasonable excuse for the failure to comply with requirements that created the default. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233; 600 NW2d 638 (1999); *Barclay v Crown Bldg & Dev, Inc*, 241 Mich App 639, 653; 617 NW2d 373 (2000). Whether to grant a motion to set aside a default or a default judgment rests in the discretion of the trial court. *Park v American Casualty Ins Co*, 219 Mich App 62, 66; 555 NW2d 720 (1996). The trial court must award costs as a condition of setting aside a default. MCR 2.603(D)(4).

Arguments and Analysis

In all motions seeking relief from a default or default judgment, the party moving to set aside the default or default judgment must satisfy the good cause and meritorious defense requirements of MCR 2.603(D)(1). If relief is sought under MCR 2.612(C), the moving party also has to meet any additional grounds required by the pertinent subrule. MCR 2.612(C)(1)(a)-(f).

In support of their motion, Defendants rely on an affidavit of merit executed by Defendant Adamo. While Defendant Adamo concedes that he was properly served with the summons and complaint on September 24, 2013, he contends that he contacted Plaintiff's counsel via letter on October 8, 2013 to request an extension to retain counsel and file an answer. However, the only contact information provided by the letter is Defendant Adamo's address. Moreover, Plaintiff was under no duty to grant an extension. Defendant Adamo also testified that he first attempted to file an answer in this matter on October 15, 2013 and ultimately filed an answer on October 16, 2013, the date the initial default was entered against him. As a result, the answer was rejected.

With respect to a meritorious defense, Defendant Adamo testified that Defendant Glendale received a quit claim deed for the Subject Property from A&D Realty, LLC, and also entered into an Agreement Regarding Real Estate between Defendant Glendale and Corepoint Loan Holdings, LLC, successor to Chrysler Financial Services, America, LLC and other related Chrysler entities. In their motion, Defendants contend that “[t]here are a number of meritorious defenses to the case itself, the most egregious being the lack of notice to A&D Realty, LLC and to Defendants.” However, Defendants have failed to support their assertion in any way. A party may not merely state a position and then leave it to the Court to rationalize and discover the basis for the claim, nor may he leave it to the Court to search for authority to sustain or reject his position. *People v Mackle*, 241 Mich App 583, 604 n 4; 617 NW2d 339 (2000). In this case, Defendants have asserted that meritorious defenses exist but have not elaborated on those assertions in any detail. Moreover, Plaintiff has provided proof establishing that Defendants did not obtain or file their quit claim deed to the Subject Property until after Plaintiff had obtained the Subject Property. (*See* Plaintiff’s Exhibits C, D and E.) Further, the claim of interest was not filed until well after Plaintiff’s obtained the Subject Property. (*Id.*) In light of these facts, the Court is convinced that Defendants have failed to meet their burden of establishing a meritorious defense. Therefore, Defendants’ motion to set aside the defaults is denied.

Conclusion

For the foregoing reasons, Defendants’ motion to set aside default is DENIED. Pursuant to MCR 2.602(A)(3), the Court states this matter remains open.

IT IS SO ORDERED.

/s/ John C. Foster

JOHN C. FOSTER, Circuit Judge

Dated: January 15, 2014

JCF/sr

Cc: *via e-mail only*

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