STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

XL BYRON CENTER, LLC,

Plaintiff,

vs.

JETZ SERVICE CO, INC., d/b/a
COMMERCIAL COIN LAUNDRY
SYSTEMS, AMERICAN COIN LAUNDRY,
and CROWN COIN METER COMPANY,

Defendant.
_____/

Case No. 13-09503-CKB

HON. CHRISTOPHER P. YATES

ORDER DENYING DEFENDANT'S MOTION TO SET ASIDE DEFAULT
AND GRANTING PLAINTIFF'S MOTION TO ENTER DEFAULT JUDGMENT

Plaintiff XL Byron Center, LLC ("XL Byron") filed this lawsuit against Defendant Jetz Service Co, Inc. ("Jetz") contending that Jetz's lease of coin-operated laundry equipment to XL Byron had run its course. XL Byron served the summons and complaint upon the Michigan registered agent for Jetz on November 21, 2013. When Jetz failed to answer the complaint within the 21-day period prescribed by MCR 2.108(A)(1), XL Byron obtained a clerk's entry of default on December 19, 2013. XL Byron then filed a motion for entry of a default judgment on December 23, 2013, which was set for a hearing on January 24, 2014. The Court anticipated an uncontested hearing on that date, but on the eve of that hearing, Jetz filed an objection to the motion for entry of default judgment and an emergency motion to set aside the default pursuant to MCR 2.603(D) and MCR 2.612(C)(1)(a) and (f).

To prevail on a motion to set aside a default pursuant to MCR 2.603(D), "a defendant must demonstrate both good cause, i.e., a reasonable excuse for failure to answer, and a meritorious defense." Saffian v Simmons, 477 Mich 8, 14 (2007). To establish "good cause," the defendant must show "(1) a procedural irregularity or defect, or (2) a reasonable excuse for failure to comply with the requirements

that created the default[.]" Alken-Ziegler, Inc v Waterbury Headers Corp, 461 Mich 219, 233 (1999). Here, Jetz has not presented good cause for failing to file an answer within the 21-day period prescribed by MCR 2.108(A)(1). Instead, Jetz simply asserts that it failed to file an answer because it was unable to obtain counsel during the holiday season. Jetz's failure to obtain counsel, however, amounts to pure negligence, and "'[i]t is well settled that the negligence of either the attorney or the litigant is not normally grounds for setting aside a default regularly entered.'" Shawl v Spence Bros, Inc, 280 Mich App 213, 223 (2008). Therefore, the Court must deny Jetz's request to set aside the default under MCR 2.603(D) because Jetz failed to meet the good-cause requirement for setting aside the default under MCR 2.603(D).*

The Court must also deny Jetz's request to set aside the default under MCR 2.612(C)(1)(a). The Court may set aside a default pursuant to MCR 2.612(C)(1)(a) if the default was entered as a result of "[m]istake, inadvertence, surprise, or excusable neglect." But this rule is not designed to relieve a party of a careless decision, see Limbach v Oakland Bd of Rd Comm'rs, 226 Mich App 389, 393 (1997), such as Jetz's failure to proceed with alacrity in obtaining a Michigan attorney after it received the summons and complaint. Further, Jetz's request for relief under MCR 2.612(C)(1)(f) must also be denied. "'In order for relief to be granted under MCR 2.116(C)(1)(f), the following three requirements must be fulfilled: (1) the reason for setting aside the judgment must not fall under subsections a through e, (2) the substantial rights of the opposing party must not be detrimentally affected if the judgment is set aside, and (3) extraordinary circumstances must exist that mandate setting aside the judgment in order to achieve justice.'" C D Barnes Assoc, Inc v Star Heaven, LLC, 300 Mich App 389, 424 (2013).

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* Our Supreme Court has explained that "if a party states a meritorious defense that would be absolute if proven, a lesser showing of 'good cause' will be required than if the defense were weaker, in order to prevent manifest injustice." Alken-Ziegler, 461 Mich at 233-234. Nevertheless, "'good cause' and a 'meritorious defense' are separate requirements that may not be blurred" and "a party must have both[.]" Shawl, 280 Mich App at 237. Here, Jetz has not established good cause, so the Court must deny Jetz's request to set aside the default under MCR 2.603(D).

Leaving aside the fact that Jetz has also requested relief under subsection (a), the Court finds that Jetz's failure to obtain Michigan counsel in a timely manner does not amount to extraordinary circumstances justifying relief. Accordingly, the Court must deny Jetz's motion to set aside the default under MCR 2.612(C)(1)(a) and (f).

In sum, the Court concludes that Jetz has failed to satisfy the requirements necessary to set aside the default entered against it. The Court recognizes that this is a harsh outcome, but "the policy of this state is generally against setting aside defaults and default judgments that have been properly entered." Alken-Ziegler, 461 Mich at 229. Thus, the Court must deny Jetz's motion to set aside the default, and it must grant XL Byron's motion to enter a default judgment. Thus, IT IS ORDERED that a default judgment is entered in favor of Plaintiff XL Byron. The agreement between the defendant and the plaintiff's predecessor in interest is determined to merely be a license that has been revoked.

IT IS SO ORDERED.

This is a final order that resolves the last pending claims and closes the case.

Dated: February 14, 2014

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge