

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

UEI, INC., a Michigan corporation,

Plaintiff,

vs.

WEC GROUP, LLC, a Michigan limited
liability company,

Defendant.

Case No. 14-01036-CKB

HON. CHRISTOPHER P. YATES

OPINION AND ORDER DENYING DEFENDANT'S
MOTION TO SET ASIDE DEFAULT JUDGMENT

Plaintiff UEI, Inc. ("UEI") brought this routine commercial collection action to recover on a claim for breach of contract against Defendant WEC Group, LLC ("WEC"). In simple terms, UEI alleged that it filled a purchase order from WEC by fabricating three progressive dies and die plates, but WEC paid only 60 percent of the invoice amount, leaving a balance due of \$115,098. UEI filed this lawsuit on February 5, 2014, to recover that outstanding balance.

The proof of service submitted by Plaintiff UEI establishes that Defendant WEC was served with the summons and complaint on February 18, 2014. When WEC failed to answer or otherwise respond within the 21-day period prescribed by MCR 2.108(A)(1), UEI obtained a clerk's entry of default on March 13, 2014, see MCR 2.603(A)(1), followed by a default judgment for \$115,368 on March 17, 2014. See MCR 2.603(B)(3). Then, on April 7, 2014, WEC filed a motion to set aside the default judgment. That motion, which was accompanied by an affidavit from Gregory Wolf, set forth a request for relief under MCR 2.603(D) and MCR 2.612(C)(1). Thus, the Court must decide whether WEC has presented a sufficient basis for relief from the default judgment.

As our Supreme Court has explained, “although the law favors determination of claims on the merits, it also has been said that the policy of this state is generally against setting aside defaults and default judgments that have been properly entered.” Alken-Ziegler, Inc v Waterbury Headers Corp, 461 Mich 219, 229 (1999). The language of MCR 2.603(D)(1) “requires a party seeking to set aside a default or a default judgment to demonstrate good cause and to file an affidavit showing a meritorious defense.” Id. The requirements of “good cause” and a “meritorious defense” exist as separate elements, see id., but “the strength of the defense” affects “the ‘good cause’ showing that is necessary.” Id. at 233. That is, “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 a manifest injustice.” Id. at 233-234. The language of MCR 2.612(C)(1) allows the Court to “relieve a party . . . from a final judgment” on specific grounds set forth in that rule. Our Court of Appeals has employed that rule to grant relief from a default judgment, see Pascoe v Sova, 209 Mich App 297, 301 (1995), so the Court must consider Defendant WEC’s entitlement to relief on the basis of both Michigan Court Rules cited in WEC’s motion.

A. MCR 2.603(D)(1).

By its terms, MCR 2.603(D)(1) provides that relief from a default judgment “shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.” In an effort to meet these requirements, Defendant WEC has supplied the affidavit of Gregory Wolf, who serves as WEC’s president and chief executive officer. See Affidavit of Gregory Wolf, ¶ 1. That affidavit acknowledges that WEC received the summons and complaint, and it explains that Wolf “took it upon [himself] to file the appropriate responses.” See id., ¶¶ 3-4. Because Wolf received

the summons and complaint along with discovery requests, he responded to the discovery requests but not the complaint because he “believed that answering the Discovery Requests was sufficient.” Id., ¶ 5. Several days later, after Wolf received a copy of the default judgment on March 19, 2014, see id., ¶ 8, Wolf “drafted a motion to set aside the default judgment and mailed it to the Court and [counsel for Plaintiff UEI] on March 20, 2014,” id., ¶ 9, but the clerk’s office apparently rejected Wolf’s submission because it had not been electronically filed, as required under the rules governing the Specialized Business Docket. See id., Exhibit 1-C.

The Court concludes that these facts do not add up to “good cause” under MCR 2.603(D)(1) and the factors identified by our Court of Appeals in Shawl v Spence Bros, Inc, 280 Mich App 213, 238 (2008). First, Wolf never attempted to file an answer to the complaint. Shawl, 280 Mich App at 238 (factor 1). Second, as Wolf’s affidavit demonstrates, there was no defective process or notice. Id. (factor 4). Third, WEC did not move to set aside the default judgment for three weeks after that judgment was properly entered.* Id. (factor 3). Fourth, the failure to file an answer resulted from Wolf’s confusion about the meaning of the complaint and discovery requests, but he made no effort to seek guidance from any knowledgeable person about those documents. Id. (factors 5 & 6). Fifth, the judgment simply constitutes the outstanding balance on an obligation that WEC partially paid. Id. (factor 7). Sixth, the judgment creates no ongoing liability. Id. (factor 8). Finally, no insurance company was involved; WEC simply acted through its president and CEO. Id. (factor 9). In sum, every applicable factor identified by our Court of Appeals militates against relief from the default judgment.

* As a non-lawyer, Wolf had no authority to represent WEC, see Peters v Desnick, 171 Mich App 283, 287 (1988), so his submission of a motion to set aside the default judgment must be treated as a nullity.

Even assuming, *arguendo*, that Defendant WEC could show “good cause” for failing to file a timely answer, WEC would not be entitled to relief from the default judgment because WEC has no “meritorious defense,” as contemplated by MCR 2.603(D)(1) and Shawl Bros, 280 Mich App at 238. According to Gregory Wolf’s affidavit, UEI delivered the three dies and die plates to WEC, but those dies caused problems for WEC’s customer because “UEI set the trim breakage for mild steel not ultra-high strength steel.” See Affidavit of Gregory Wolf, ¶ 16. To be sure, the materials attached to WEC’s motion reflect difficulties in dealing with the dies delivered by UEI, but WEC’s customer did not return any of the dies to WEC. Instead, WEC’s customer made adjustments to the dies and kept its manufacturing process on track. Therefore, the most WEC could gain in contesting WEC’s claim would be a setoff against the purchase price under a theory of recoupment. See, e.g., McCoig Materials, LLC v Galui Constr, Inc, 295 Mich App 684, 694-696 (2012).

“In determining whether a defendant has a meritorious defense, the trial court should consider whether . . . (1) the plaintiff cannot prove or the defendant can disprove an element of the claim or a statutory requirement; (2) a ground for summary disposition exists under MCR 2.116(C)(2), (3), (5), (6), (7), or (8); or (3) the plaintiff’s claim rests on evidence that is inadmissible.” Shawl, 280 Mich App at 238. Here, Defendant WEC cannot meet any of these criteria. First, WEC plainly took possession of the dies and die plates delivered by Plaintiff UEI and provided them to its customer. Although that customer may have complained about the dies and die plates, the customer chose not to return the dies and die plates to WEC. As a result, WEC was paid nearly in full by its customer. Second, WEC would have no basis for obtaining summary disposition against UEI if the Court were to allow WEC to defend on the merits. At most, WEC would have a setoff claim under a theory of recoupment. Third, UEI’s breach-of-contract claim against WEC manifestly rests on evidence that

would be admissible at trial. Accordingly, WEC cannot demonstrate any meritorious defense to the breach-of-contract claim on which UEI recovered in the default judgment, so the Court must deny WEC's request for relief from the default judgment under MCR 2.603(D)(1).

B. MCR 2.612(C)(1).

Defendant WEC's reliance upon MCR 2.612(C)(1) seems to be something of an afterthought because WEC's brief contains no development of that theory. The language of MCR 2.612(C)(1) presents a high hurdle for those seeking relief from a civil judgment. Specifically, the rule requires a showing of "[m]istake, inadvertence, surprise, or excusable neglect[,]" see MCR 2.612(C)(1)(a), newly discovered evidence, see MCR 2.612(C)(1)(b), fraud, see MCR 2.612(C)(1)(c), a judgment that is void, see MCR 2.612(C)(1)(d), satisfaction, release, or discharge of the judgment, see MCR 2.612(C)(1)(e), or "[a]ny other reason justifying relief from the operation of the judgment." See MCR 2.612(C)(1)(f). To obtain relief under the catch-all provision, MCR 2.612(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 Associates, Inc v Star Heaven, LLC, 300 Mich App 389, 424 (2013). "Generally, relief is granted under subsection f only when the judgment was obtained by the improper conduct of the party in whose favor it was rendered." Id. Here, the Court's perusal of Gregory Wolf's affidavit reveals nothing giving rise to any right to relief from the default judgment under MCR. 2.612(C)(1). Therefore, insofar as WEC has relied upon that rule to set aside the default judgment, the Court must deny WEC's request.

In the final analysis, the Court's faithful application of the principles articulated in Alken-Ziegler, 461 Mich 219, and Shaw, 280 Mich App 213, lead ineluctably to the conclusion that there exists no basis for granting relief from the default judgment under MCR 2.603(D)(1). Similarly, on the strength of C D Barnes, 300 Mich App 389, and the language of the rule itself, the Court cannot provide relief from the default judgment under MCR 2.612(C)(1). Therefore, the Court must deny Defendant WEC's motion to set aside the default judgment in favor of Plaintiff UEI.

IT IS SO ORDERED.

Dated: July 3, 2014



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