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Utah Supreme Court

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IN THE SUPREME COURT OF THE

STATE OF UTAH

CORROON & BLACK,

Plaintiff-Respondent,

vs.

MOUNTAIN WEST TRANSPORTATION COMPANY, a Utah corporation, and SALT LAKE TRANSPORTATION COMPANY, a Utah corporation,

Defendants-Appellants.

Case No. 17371

BRIEF OF APPELLANTS

APPEAL FROM JUDGMENT OF THE THIRD JUDICIAL DISTRICT COURT IN AND FOR SALT LAKE COUNTY STATE OF UTAH

The Honorable Kenneth Rigtrup, Presiding Judge

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STATUTES

Rule 60(b), Utah Rules of Civil Procedure. 2

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IN THE SUPREME COURT OF THE

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	:	
Defendants-Appellants.	:	

BRIEF OF APPELLANTS

NATURE OF THE CASE

Plaintiff, Corroon & Black, brought this action on contract to collect earned but unpaid insurance premiums allegedly due and owing from Defendants.

DISPOSITION IN LOWER COURT

Plaintiff's Complaint, filed on March 18, 1980, sought damages in the amount of $27,433.01, together with interest at six percent per annum, from Defendants Mountain West Transportation Company and Salt Lake Transportation Company, jointly and severally. Default Judgment was

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entered against Defendants on the 7th day of May, 1980 by the Honorable Bryant H. Croft. Pursuant to Rule 60(b), Utah Rules of Civil Procedure, Defendants filed their Motion to Set Aside Default Judgment on June 20, 1980. Thereafter, the Honorable Kenneth Rigtrup entered an Order Denying that Motion.

RELIEF SOUGHT ON APPEAL

Defendants-Appellants seek reversal of the Order of the District Court denying their Motion to Set Aside Default Judgment.

STATEMENT OF FACTS

Defendant Mountain West Transportation Co. ("MWTC") acknowledges it was served with the Complaint herein on March 24, 1980. (R. 5 and 6) Defendant Salt Lake Transportation Company ("SLTC") also recognizes it was served with the Complaint on March 27, 1980. (R. 7 and 8) However, neither Company answered the Complaint because Plaintiff represented that it would not pursue this lawsuit since the parties were meeting and negotiating in an attempt to reconcile the books and reach an agreement on any amounts due. (R. 17)

Plaintiff's claims for unpaid insurance premiums are actually based upon several distinct transactions. First, Plaintiff asserts SLTC failed to pay certain unspecified sums for policies it had from approximately March of 1977

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through May of 1979. (R. 2) Plaintiff then alleges upon "information and belief" that MWTC "agreed and/or is obligated" to pay these outstanding amounts. (R. 3) Next, Plaintiff claims MWTC owed certain unspecified amounts for two policies it had taken out during approximately May through October of 1979 (Id.). Finally, Plaintiff prays for $27,433.01, plus interest, from both Defendants, jointly and severally. (R. 3 and 4)

Defendants believe all or a substantial part of the premiums claimed by Plaintiff are not due Plaintiff. (R. 14 and 15) Defendant MWTC further denies it assumed the obligations of SLTC. (R. 13) Defendant MWTC only purchased from SLTC several vehicles for which insurance had been obtained by SLTC from Plaintiff. (R. 12 and 13) At no time did MWTC ever advise Plaintiff that this was the case. (R. 13) In fact, Plaintiff informed MWTC in the summer of 1979 that it had a credit balance with Plaintiff. (R. 13)

When MWTC was advised by Plaintiff that a dispute existed, Mr. Charles Boynton, President of MWTC, requested the Controller, David Stannard, to meet with the representatives of Plaintiff in an attempt to reconcile the differences in the accounts of MWTC and those of the Plaintiff. (R. 16) Mr. Stannard had a number of telephone conversations and meetings with agents and employees of the Plaintiff.

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(R. 17) During the course of these negotiations, Plaintiff initiated the instant action. (Id.) However, Mr. Stannard "was advised that the lawsuit would not be pursued until it could be determined whether the books could be reconciled and whether the parties could reach agreement on an amount due." (Id.) Mr. Stannard so advised Mr. Boynton. (R. 13 and 1[illegible] Based on these representations, the Defendants did not answer Plaintiff's Complaint. (R. 13)

On May 7, 1980, 45 days after service, Judgment by Default was entered against Defendants in this matter. (R. 10) The Judgment was against both Defendants in the principal amount of $27,433.01. (Id.) On June ~~19~~ 20, 1980, Defendants filed their Motion to Set Aside Default Judgment. (R. 18-22) In resisting the Motion, Plaintiff denied that it had agreed to toll this action pending negotiations over the disputed insurance premiums, and asserted that the full amount granted in the Default Judgment is due and owing from Defendants. (R. 32-36) On September 8, 1980, the District Court entered its Order Denying Motion to Set Aside Default Judgment.

ARGUMENT

THE COURT BELOW ABUSED ITS DISCRETION IN REFUSING TO GRANT DEFENDANTS' MOTION TO SET ASIDE DEFAULT JUDGMENT SINCE DEFENDANTS PRESENTED REASONABLE JUSTIFICATION FOR THEIR FAILURE TO RESPOND TO PLAINTIFF'S COMPLAINT.

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Default judgments, by their very nature, are subject to abuse and for this reason are traditionally looked on with suspicion. "It cannot be gainsaid that defaults are not favored by the court." Gilleland vs. Sandwich World, Inc., ____P.2d____, No. 16888 (Utah Sup. Ct., August 20, 1980). In Heathman vs. Fabian & Clendenin, 14 Utah 2d 60, 377 P.2d 189, 190 (1962), this Court stated the proposition as follows:

> Judgments by default are not favored by the courts nor are they in the interest of justice and fair play. No one has an inalienable or constitutional right to a judgment by default without a hearing on the merits. The courts, in the interest of justice and fair play, favor, where possible, a full and complete opportunity for a hearing on the merits of every case.

In cases of uncertainty, default judgments should be set aside to allow trial on the merits". Board of Education of Granite School District vs. Cox, 14 Utah 2d 385, 384 P.2d 806, 807 (1963); Locke vs. Peterson, 3 Utah 2d 415, 285 P.2d 1111, 1113 (1955).

Although a trial court is vested with considerable discretion, judgments by default should be set aside where any reasonable excuse is offered by the defaulting party. Westinghouse Electric Supply Co. vs. Paul W. Larson Contractor, Inc., 544 P.2d 876 (Utah Sup. Ct. 1975). In Mayhew vs. Standard Gilsonite Co., 14 Utah 2d 52, 376 P.2d 951, 952 (1962), this Court declared that a trial court

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> [c]annot act arbitrarily . . . but should be generally indulgent toward permitting full inquiry and knowledge of disputes so they can be settled advisedly and in conformity with law and justice. To clamp a judgment rigidly and irrevocably on a party without a hearing is obviously a harsh and oppressive thing. It is fundamental in our system of justice that each party to a controversy should be afforded an opportunity to present his side of the case. For that reason it is quite uniformly regarded as an abuse of discretion to refuse to vacate a default judgment where there is reasonable justification or excuse for the defendant's failure to appear, and timely application is made to set it aside. (Emphasis Supplied)

See also, Gilleland, supra; Central Finance vs. Kynaston, 22 Utah 2d 284, 452 P.2d 316 (1969); Board of Education vs. Cox, 14 Utah 2d 385, 384 P.2d 806 (1963); Utah Commercial & Savings Bank vs. Trumbo, 17 Utah 198, 53 P. 1033 (1898).

Defendants submit that they have offered ample and reasonable justification for their failure to answer Plaintiff's Complaint. Plaintiff lulled Defendants into a false sense of security by promising that this lawsuit would not be pursued while the parties were meeting and negotiating in an attempt to reach an agreement on any amounts which may be due Plaintiff. Breaching this representation caught Defendants by surprise since they had relied upon it in not answering the Complaint. Although Plaintiff denies such representation, any doubt should, as noted above, be resolved in favor of setting aside the Default so that Defendants may have their day in court.

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If permitted to answer, Defendants would assert the following meritorious defenses:

(a) Based upon the books of MWTC and SLTC, Defendants would deny the the amount claimed by Plaintiff, or any amount, is due. (R. 19)

(b) Even if it was ultimately determined that the amounts claimed by Plaintiff are due, separate amounts would be due from SLTC and from MWTC. MWTC did purchase certain assets of SLTC, but it did not assume the obligations of SLTC. Moreover, the liabilities of MWTC and SLTC, if any, to Plaintiff are separate, not joint and several. Neither Defendant would owe the entire amount claimed and for which judgment against both Defendants has been rendered. (R. 14-15)

CONCLUSION

Based upon the foregoing, Defendants respectfully urged this Honorable Court to reverse the Lower Court's Order Denying their Motion to Set Aside Default Judgment.

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RESPECTFULLY SUBMITTED this 31st day of December, 1980.

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CERTIFICATE OF SERVICE

I hereby certify that two true and correct copies of the foregoing BRIEF OF APPELLANTS were mailed, postage prepaid, this 31st day of December, 1980, to:

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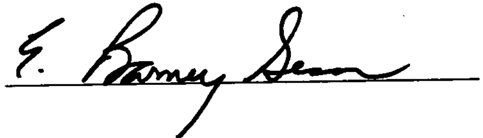

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