# STATE OF MICHIGAN

# COURT OF APPEALS

SCHILLER CONSTRUCTION COMPANY

Plaintiff-Appellee,

v

JOHN SAWULSKI, a/k/a MICHAEL SAWULSKI, d/b/a MIDWEST MECHANICAL SYSTEMS and MECHANICAL SYSTEMS CONTRACTING CORPORATION,

Defendants-Appellants.

UNPUBLISHED
November 5, 1996

No. 188062
LC No. 95-481198 CZ

Before: Markman, P.J., and Smolenski and G. S. Buth,* JJ.

PER CURIAM.

Defendants appeal as of right an order of the Oakland Circuit Court denying defendants' motion to set aside a default judgment. We affirm.

This action arose out of a contract between plaintiff, Schiller Construction Company and Midwest Mechanical Systems Contracting, Inc. Plaintiff alleges that it is owed $82,593.07 for services it rendered under the contract. On June 29, 1992, plaintiff brought suit against Midwest Mechanical Systems Contracting Inc. in Oakland Circuit Court to recover the amount it was allegedly owed. However, on August 13, 1993, Midwest Mechanical Systems Contracting, Inc. filed bankruptcy. The plaintiff's case was dismissed on October 5, 1993.

On August 4, 1994, plaintiff filed the present case in Oakland Circuit Court, alleging that defendants were responsible for the $82,593.07 debt of Midwest Mechanical Systems Contracting, Inc. under an alter ego theory of liability. The parties dispute whether defendants received proper service of process. A default was entered against defendants on October 31, 1994. On December 22, 1994, plaintiff filed a motion for entry of default judgment, and a default judgment was entered on January 11, 1995. The trial court denied defendants' motion to set aside the default.

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendants first argue that they did not receive proper service of process. Specifically, defendants argue that the summons and complaint were served on Thomas Sawulski, who is defendant, John Sawulski's, brother and who is not a party to this lawsuit. Based upon the testimony of the process server and other evidence, we do not believe that the trial court's finding that defendant, John Sawulski, rather than his brother, Thomas Sawulski, properly received service of process was clearly erroneous.

Defendants next argue that the trial court's denial of their motion to set aside the default judgment was an abuse of discretion. We disagree. MCR 2.603(D)(1) provides that "a motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed." Good cause sufficient to warrant the setting aside of a default or a default judgment includes 1) a substantial defect or irregularity in the proceedings upon which the default was based, 2) a reasonable excuse for failure to comply with the requirements that created the default, or 3) some other reason showing that manifest injustice would result if the default and the resulting default judgment were allowed to stand. *Gavulic v Boyer*, 195 Mich App 20, 24-25; 489 NW2d 124 (1992).

Defendants argue that good cause for setting aside the default judgment existed because the failure of plaintiff to provide defendants with notice of entry of the default or default judgment constituted an irregularity in the proceeding. We disagree. Although entry of a default is generally a ministerial act, the defaulted party is entitled to notice of the entry of the default after the entry. *Gavulic, supra*, at 25. Accordingly, failure to notify a party of an entry of a default or a default judgment is sufficient to show a substantial defect in the proceedings and, therefore, good cause to set aside a default judgment. *Id.* However, in order to constitute good cause to set aside a default judgment, a substantial defect or irregularity must have prejudiced the defendant. *Alycekay Company v Hasko Construction Company, Inc*, 180 Mich App 502, 506-507; 448 NW2d 43 (1989).

In the present case, the lower court file contains a proof of service indicating that notice of entry of the default and the motion for default judgment were served on defendants at the address where process was served. See MCR 2.603(A)(2); MCR 2.603(B)(1). We do not believe the trial court's decision not to set aside the default judgment based on lack of notice was an abuse of discretion.

Defendants next argue that the default judgment should be set aside because defendants have a reasonable excuse for their failure to plead or appear. Defendants argue that they did not plead or appear because they did not receive service of process or notice of the default or default judgment, and were not made aware of the present proceedings until they received notice of the garnishment. However, defendants' argument fails in light of our finding that the trial court's determinations that defendants were properly served and were given proper notice were not clearly erroneous.

Defendants next argue that manifest injustice will result if the default judgment is not set aside. Again we disagree. Generally, the law treats a corporation as an entirely separate entity from its stockholders. *Kline v Kline*, 104 Mich App 700, 702; 305 NW2d 297 (1981). However, where a corporation is a mere agent or instrumentality of its shareholders, or a device to avoid legal obligations, the corporate entity may be ignored. *Kline, supra*, at 702. Furthermore, a court may look through the

veil of corporate structure to avoid fraud or injustice, such as when the notion of a corporation as a legal entity is used to defeat public convenience, justify a wrong, protect fraud, or defend crime. *Id*. In addition, the community of interest between a corporation and its shareholders may be so great that, to meet the purposes of justice, they should be considered as one and the same. *Id*.

In the instant case, the confusion brought on by the similarity of the corporations' names and the various aliases of defendant, John Sawulski, as well as the fact that John Sawulski appears to be closely involved with both corporations indicates that manifest injustice will not result if the default judgment is not set aside. The confusion brought on by the similarity of the corporation's names and the fact, noted by the trial court, that defendants often used the names interchangeably suggests a possible intent to defraud. We find no abuse of discretion in the trial court's denial of defendants' motion to set aside the default judgment.

Finally, defendants argue that the trial court's denial of defendants' motion for reconsideration was an abuse of discretion. We disagree. A motion for reconsideration will only be granted if the moving party demonstrates a palpable error by which the court and the parties have been misled, and shows that a different disposition of the motion must result from correction of the error. MCR 2.119(F)(3). A motion for reconsideration which merely presents the same issues ruled on by the court, either expressly or by reasonable implication, will not be granted. MCR 2.119(F)(3).

Defendants assert that their motion for reconsideration should have been granted because they were entitled to an evidentiary hearing to determine whether they had a meritorious defense. Defendants offered no authority for their position that they were entitled to an evidentiary hearing before this could be determined. Furthermore, MCR 2.603(D), which governs the setting aside of defaults, does not require the court to hold an evidentiary hearing to determine whether a party has a meritorious defense, but merely requires that an affidavit of facts showing a meritorious defense be filed. Furthermore, this Court is not convinced that the motion to set aside the default judgment would have been granted had an evidentiary hearing been held. The trial court's denial of defendants' motion for reconsideration was not an abuse of discretion.[1]

Affirmed.

/s/ Stephen J. Markman
/s/ Michael R. Smolenski
/s/ George S. Buth

[1] Defendants also argue that the court should have reconsidered their earlier motion because the defendants had just secured the affidavit of Thomas Sawulski in which he stated that he was served with the summons and complaint, rather than his brother, defendant, John Sawulski. However, the trial court was made aware of Thomas Sawulski's statements at the hearing on defendant's motion to set aside the default and, further, defendants offer no reason why the affidavit could not have been offered at the time of the motion to set aside the default.