# STATE OF MICHIGAN

# COURT OF APPEALS

PATRICIA FOSTER,

Plaintiff-Appellee,

v

NATIONAL UNION FIRE INSURANCE COMPANY,

Garnishee Defendant-Appellant,

and

CHARLEY'S RESTAURANT, INC., d/b/a SOUTHFIELD CHARLEY'S,

Defendant.

UNPUBLISHED
November 22, 1996

No. 182169
LC No. 93-467216-NO

Before: Reilly, P.J., and Sawyer and W.E. Collette,* JJ.

PER CURIAM.

Garnishee defendant National Union Fire Insurance Co (National) appeals as of right from the circuit court's order denying its motion to set aside a default judgment of $70,652.64 entered against it. We affirm.

Plaintiff originally sued defendant Charley's Restaurants, Inc. (Charley's) for injuries sustained at the Southfield Charley's restaurant. National was Charley's liability insurer. Although plaintiff's lawyers had contacted claims adjusters for National regarding plaintiff's injuries, Charley's resident agent did not inform National of the lawsuit filed by plaintiff against Charley's. Charley's did not defend against the lawsuit, and plaintiff obtained a default against it. Plaintiff moved for a default judgment against Charley's, and plaintiff's counsel provided a copy of that motion to a claims adjuster for National six days before the hearing. National did not oppose the motion, and a default judgment was entered against Charley's for $68,655. Following entry of the default judgment against Charley's, plaintiff

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

served a writ of garnishment upon National. National did not respond to the writ of garnishment or the resulting default entered against it. Plaintiff moved for entry of a default judgment against National. National did not respond to plaintiff's motion, so a default judgment was entered against it. Following entry of the default judgment against National itself, National moved to set aside the default judgment. The circuit court found that National had not shown good cause to set aside the default and denied its motion.

National argues that the trial court abused its discretion by failing to set aside the writ of garnishment entered as a default judgment against National and in favor of plaintiff. We disagree. According to National, it was deprived of an opportunity to investigate plaintiff's claims or defend against her lawsuit because its insured, Charley's, never notified it of the suit as required under the terms of its insurance policy. However, National received timely notice of plaintiff's accident, inquiries from plaintiff's lawyers suggesting an impending lawsuit, and notice that a default judgment would be entered against Charley's, yet did nothing to protect its interest. National cannot claim that Charley's failure to provide timely notice of the actual lawsuit somehow prejudiced its ability to investigate the claims against it. *Koski v Allstate Ins Co*, 213 Mich App 166, 173-174; 539 NW2d 561 (1995), lv pending. Any failure by Charley's to notify National of plaintiff's suit did not result in prejudice and could not have been asserted as a defense against plaintiff's writ of garnishment. Compare *LeDuff v ACIA*, 212 Mich App 13, 17; 536 NW2d 812 (1995). Thus, National did not show good cause sufficient to set aside the default, nor did it show a meritorious defense to plaintiff's writ of garnishment. Therefore, the circuit court did not abuse its discretion by refusing to set aside the default judgment. MCR 2.603(D)(1); *Harvey Cadillac Co v Rahain*, 204 Mich App 355, 358-359; 514 NW2d 257 (1994).

Affirmed.

/s/ Maureen Pulte Reilly
/s/ David H. Sawyer
/s/ William E. Collette