

STATE OF MICHIGAN
COURT OF APPEALS

TOMMY JONES and JOANN JONES,

Plaintiffs,

v

JAMES TIMOTHY ELMORE, DAVID
LA DOUCEUR, and JAMES BROTHER'S
LANDSCAPE & POND SUPPLY, INC.,

Defendants-Third-Party Plaintiffs-
Appellees,

v

POWER PLAY CUSTOM TRAILERS and
STEPHEN SASSEK,

Third-Party Defendants-Appellants.

UNPUBLISHED
October 19, 2006

No. 260879
Wayne Circuit Court
LC No. 03-335438-NI

Before: Davis, P.J., and Murphy and Schuette, JJ.

PER CURIAM.

Third-party defendants appeal as of right a default judgment and an order denying their motion to set aside the default judgment. The default judgment was entered in favor of third-party plaintiffs in the amount of \$975,000. We reverse and remand.

The original action filed by plaintiffs against third-party plaintiffs arose out of a vehicular accident in which the trailer attached to third-party plaintiffs' vehicle came loose, crossed the center line of Telegraph Road, and struck plaintiffs' truck. Third-party defendants had previously performed work on the trailer. The original complaint sought \$3,500,000 for personal injuries and property damage. Third-party plaintiffs filed their complaint, alleging that third-party defendants had repaired the trailer negligently, that the negligent repairs were the cause of the accident, and that third-party defendants were therefore entirely responsible for any of plaintiffs' damages. Plaintiffs and third-party plaintiffs reached a settlement agreement, apparently in the amount of \$975,000, which represented the damage award contained in the default judgment.

Our jurisprudence "favors the determination of claims on the merits," but also opposes "setting aside defaults and default judgments that have been properly entered." *Alken-Ziegler*,

Inc v Waterbury Headers Corp, 461 Mich 219, 229; 600 NW2d 638 (1999). We review for an abuse of discretion the trial court’s decision whether to set aside a default or a default judgment. *AMCO Builders & Developers, Inc v Team Ace Joint Venture*, 469 Mich 90, 94; 666 NW2d 623 (2003). Except where a court lacks jurisdiction over a defendant, a default or default judgment may only be set aside “if good cause is shown and an affidavit of facts showing a meritorious defense is filed.” MCR 2.603(D)(1). “Good cause” requires either “a substantial irregularity or defect in the proceeding upon which the default is based” or “a reasonable excuse for failure to comply with the requirements that created the default.” *Alken-Ziegler, supra* at 233. The *Alken-Ziegler* Court stated 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 a manifest injustice.” *Id.* at 233-234 (emphasis added).

Here, the third-party complaint contains no jurisdictional statement with respect to the amount in dispute. Further, the third-party complaint, while referencing the underlying action, contains no mention of the jurisdictional dollar amount set forth in the original complaint, nor does it even state that plaintiffs were seeking a monetary award. Moreover, the original complaint was not attached to the third-party complaint. Under MCR 2.111(B)(2), a third-party complaint must contain:

A demand for judgment for the relief that the pleader seeks. If the pleader seeks an award of money, a specific amount must be stated if the claim is for a sum certain or a sum that can by computation be made certain, or if the amount sought is \$25,000 or less. Otherwise, a specific amount may not be stated, and the pleading must include allegations that show that the claim is within the jurisdiction of the court. . . .

Alleging the amount in controversy provides either the circuit court or the district court with a basis to invoke its jurisdiction over the case and then enter rulings in the action that bind the parties. MCL 600.605; MCL 600.8301. “Jurisdiction is the power of a court to act and the authority of a court to hear and determine a case[, and a] court’s subject-matter jurisdiction is determined only by reference to the allegations listed in the complaint.” *Grubb Creek Action Comm v Shiawassee Co Drain Comm’r*, 218 Mich App 665, 668; 554 NW2d 612 (1996). Under MCR 2.111(B)(2), the third-party complaint is blatantly defective and deficient relative to the necessary jurisdictional allegations.¹ We recognize that, considering that the original complaint contained a demand for relief in the amount of \$3,500,000, the circuit court had jurisdiction over the entire case, but that does not change the fact that the third-party complaint was deficient and defective under the court rules. Although it does not bear on our ruling, we also note that this case does not present a situation in which third-party defendants had no involvement in the court proceedings and completely ignored all matters. Indeed, defendant Sassek appeared for his deposition prior to the filing of the third-party complaint. He also appeared at an initial hearing

¹ It also gives us concern that the third-party complaint contained no hint that \$3,500,000 was potentially at stake.

regarding third-party plaintiffs' motion for entry of default, which was apparently canceled, and at the subsequent hearing concerning entry of the default judgment.

We conclude that third-party defendants have established "good cause" because of the defective third-party complaint, although the showing is not particularly strong. However, because third-party defendants presented a meritorious defense that would be absolute if proven, the lesser showing of "good cause" was sufficient in order to avoid a manifest injustice.

Third-party plaintiffs had alleged that the safety chains, tongue jack, and tongue hitch relative to the trailer had been negligently repaired, causing the accident. The affidavit of meritorious defense averred that third-party defendants were not even involved in any work associated with the safety chains and tongue jack and that they only installed a tongue hitch, which was done in a workmanlike manner and had nothing to do with the accident. If third-party defendants' defense is proven, they would not be liable for any damages. We also note that the work performed by third-party defendants on the trailer was completed three months prior to the accident, leaving an expansive window of time during which other events or circumstances might explain the trailer becoming detached. Although abuse of discretion is a very deferential standard, the trial court had no basis whatsoever to surmise that there did not exist a meritorious defense and should have given some credence to the fact that the third-party complaint was defective regarding necessary jurisdictional allegations, which also left third-party defendants without notice of a multi-million dollar suit. The order denying third-party defendants' motion to set aside the default judgment is reversed in order to prevent, on consideration of "good cause" and a meritorious defense, a manifest injustice that would have required third-party defendants to pay an award of nearly \$1,000,000. The litigation may proceed.

Reversed and remanded for entry of an order granting the motion to set aside the default judgment.² We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Bill Schuette

² We shall leave it to the trial court to assess costs against third-party defendants in a manner that is consistent with MCR 2.603(D)(4).