MEMORANDUM DECISION

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IN THE
COURT OF APPEALS OF INDIANA

Ronak Patel,
Appellant / Third Party-Plaintiff,

v.

US Business Brokers, LLC, Ajinder Singh Sandhu, and Parminder Kaur,
Appellees / Third Party-Defendants.

December 8, 2021

Court of Appeals Case No. 21A-PL-1192

Appeal from the St. Joseph Circuit Court

The Honorable John E. Broden, Judge

Trial Court Cause No. 71C01-1910-PL-391

Riley, Judge.

STATEMENT OF THE CASE

[1] Appellant-Third-Party Plaintiff, Ronak Patel (Patel), appeals the trial court's Order, granting Appellees-Third-Party Defendants', U.S. Business Brokers, LLC (USBB), Ajinder Singh Sandhu (Ajinder), and Parminder Kaur (Parminder) (collectively, Appellees), motion for relief from judgment pursuant to Indiana Trial Rule 60(B).

[2] We affirm.

ISSUE

[3] Patel presents this court with two issues on appeal, which we consolidate and restate as the following single issue: Whether the trial court abused its discretion when it set aside the entry of a default judgment based on mistake, surprise, or excusable neglect.

FACTS AND PROCEDURAL HISTORY

[4] On May 5, 2017, Hammond Hotel Partners, LLC (HHP) was created for the purpose of acquiring, renovating, and operating the hotel located at 179th Street in Hammond, Indiana. Pursuant to the HHP's Operating Agreement (Operating Agreement), the HHP consisted of three members: Patel, Parminder, and Balraj Singh Sandhu (Balraj), with Ajinder holding a power of attorney for Parminder. Each member held one vote, with Balraj holding a 67% interest percentage, Parminder holding a 18% interest percentage, and Patel holding a 15% interest percentage. Because of his prior experience in hotel renovation and management, Patel was responsible for the renovations to

the hotel and would hire the contractors to perform the renovations. Approximately one year after the acquisition, the hotel remained unfinished despite Patel being provided significant funds for the renovation. Without Patel's knowledge or consent, Ajinder and Balraj sold the hotel to CK Hospitality.

[5] On October 21, 2019, CK Hospitality, represented by attorney Mitchell Heppenheimer (Attorney Heppenheimer), filed a Complaint for immediate possession against Patel. In his answer to the Complaint, Patel included a counterclaim against CK Hospitality, and named, among others, USBB[1], Ajinder, Parminder, and Balraj as third-party defendants.[2] Shortly after Ajinder received notice of the third-party complaint filed against him, USBB, and Parminder, he discussed the third-party complaint with the other defendants, including a representative of CK Hospitality and Narotam Patel, another third-party defendant who is not part of this appeal. At the conclusion of the meeting, Ajinder believed that Parminder, USBB, and himself would be represented by Attorney Heppenheimer.

[6] On July 30, 2020, Attorney Heppenheimer was granted leave to withdraw as counsel for CK Hospitality. On August 7, 2020, Patel filed a motion for default judgment on his counterclaim against CK Hospitality. Four days later, attorney

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[1] USBB is solely owned by Ajinder.

[2] Patel also named Jitenderashinh Chauhan, Anant Patel, Narotam Patel, Salil Mishra, and Priti Patel as third-party defendants. These third-party defendants are not part of this appeal.

Joseph Amaral (Attorney Amaral) entered his appearance on behalf of CK Hospitality and Narotam Patel. On August 18, 2020, Patel filed a motion for default judgment against USBB, Ajinder, and Parminder. On January 3, 2021, the trial court entered a default judgment on the issue of liability only against Ajinder, Parminder, and USBB. Around that same time, early to mid-January 2021, Ajinder, Parminder, and USBB learned that they were, in fact, unrepresented and that a default judgment had been entered against them. On February 11, 2021, they retained Attorney Amaral to represent them. On March 23, 2021, Ajinder, Parminder, and USBB filed a motion for relief from judgment, as well as affidavits in support of the motion. On May 20, 2021, the trial court set aside the entry of default judgment, finding, in pertinent part, that:

> based on the totality of the circumstances Third-Party Defendants have met their respective burdens as to both prongs of Indiana Trial Rule 60(B). Further, the [c]ourt notes that Third-Party Defendants acted within 35 days of the entry of default by entering an appearance and seeking leave from the [c]ourt to respond to the Third-Party Plaintiff [Patel's] Complaint. There is no trial date set in this case. In fact, while the underlying case was filed in 2019, the Third-Party Complaint was not filed until July 11, 2020 and a Trial Rule 16 conference has yet to be requested or held in this case. Thus, no discovery deadlines have been set in this case. This procedural posture coupled with Indiana's strong preference for the disposition of cases on the merits further weighs in Third-Party Defendants' favor. "Any doubt as to the propriety of default judgment should be resolved in favor of the defaulted party" as "Indiana law strongly prefers disposition of cases on their merits" *Coslett v. Weddle Bros. Constr. Co*, 798 N.E.2d 859 (Ind. 2003). Therefore,

> Third-Party Defendants' Motion to Set Aside this [c]ourt's prior entry of default is GRANTED. Third-Party Defendants U[S]BB, Ajinder, and Parminder shall have up to and including June 11, 2021 to file a responsive pleading.

(Appellant's App. Vol. II, p. 95).

[7] Patel now appeals. Additional facts will be provided if necessary.

DISCUSSION AND DECISION

I. *Standard of Review*

[8] Patel contends that the trial court abused its discretion by granting Appellees' motion for relief from judgment pursuant to Indiana Trial Rule 60(B). We review the grant of a Trial Rule 60(B) motion for relief from judgment under an abuse of discretion standard. *Bunch v. Himm*, 879 N.E.2d 632, 634 (Ind. Ct. App. 2008). The trial court must balance the need for an efficient judicial system with the judicial preference for deciding disputes on the merits. *Id*. On appeal, we will not find an abuse of discretion unless the trial court's decision is clearly against the logic and effect of the facts and circumstances before it or is contrary to law. *Id*. Although a default judgment plays an important role in the maintenance of an orderly, efficient judicial system as a weapon for enforcing compliance with the rules of procedure and for facilitating the speedy determination of litigation, in Indiana there is a marked judicial deference for deciding disputes on their merits and for giving parties their day in court, especially in cases involving material issues of fact, substantial amounts of money, or weighty policy determinations. *Charnas v. Estate of Loizos*, 822

N.E.2d 181, 185 (Ind. Ct. App. 2005). Accordingly, a default judgment is not a trap to be set by counsel to catch unsuspecting litigants. *Allstate Ins. Co. v. Watson*, 747 N.E.2d 545, 546 (Ind. 2001).

[9] Here, in setting aside the default judgment, the trial court concluded that Appellees "have met their respective burdens as to both prongs of Indiana Trial Rule 60(B)," without further specifying the ground it relied upon within the trial rule. (Appellant's App. Vol. II, p. 95). As both parties advocate the application of Indiana Trial Rule 60(B)(1) in their appellate briefs, we will proceed likewise.

II. *Indiana Trial Rule 60(B)(1)*

[10] Indiana Trial Rule 60(B)(1) provides in pertinent part that "[o]n motion and upon such terms as are just the court may relieve a party or his legal representative from a judgment, including a judgment by default, for the following reasons . . . mistake, surprise, or excusable neglect." A movant filing pursuant to Indiana Trial Rule 60(B)(1) must allege a meritorious claim or defense. Ind. Trial Rule 60(B). A motion under Trial Rule 60(B)(1) does not attack the substantive, legal merits of a judgment, but rather addresses the procedural, equitable grounds justifying the relief from the finality of a judgment. *Kretschmer v. Bank of Am., N.A.*, 15 N.E.3d 595, 600 (Ind. Ct. App. 2014). There is no general rule as to what constitutes excusable neglect under Trial Rule 60(B)(1). *Id.* Each case must be determined on its particular facts. *Id*. Based on precedential case law, the following facts have been held to constitute excusable neglect, mistake, or surprise:

> (a) absence of a party's attorney through no fault of party; (b) an agreement made with opposite party, or his attorney; (c) conduct of other persons causing party to be misled or deceived; (d) unavoidable delay in traveling; (e) faulty process, whereby party fails to receive actual notice; (f) fraud, whereby party is prevented from appearing and making a defense; (g) ignorance of the defendant; (h) insanity or infancy; (i) married women deceived or misled by conduct of husbands; (j) sickness of a party, or illness of member of a family.

Id.

[11] In support of his motion to set aside the default judgment, Ajinder filed an affidavit, affirming that after receiving notice of the third-party complaint, he discussed the complaint with the other third-party defendants, including CK Hospitality and Narotam Patel, who were represented at that time by Attorney Heppenheimer. During those discussions, Ajinder believed that the defense of the allegations asserted against him would also be undertaken by Attorney Heppenheimer. Ajinder's affidavit confirms that he was never apprised of Attorney Heppenheimer's withdrawal or Attorney Amaral's appearance and only became aware that he was unrepresented when he received notice of the default judgment. Parminder's affidavit, filed in support of the motion to set aside, confirms Ajinder's statement. Patel now contends that Appellees' claim that they believed themselves to be represented by counsel was not a reasonable mistake to satisfy Indiana Trial Rule 60(B)(1)'s burden.

[12] In *Li v. NextGear Corp.*, 136 N.E.3d 313 (Ind. Ct. App. 2019), we found that a neglect in failing to answer a complaint amounted to excusable neglect due to

the clear breakdown in communication between Li, a vice-president of a dealership, and the dealership's attorney. *Id*. at 313. In *Li*, the dealership and NextGear entered into a promissory note (Note), pursuant to which NextGear loaned money to the dealership in exchange for a security interest in the dealership's assets. *Id*. at 315. The Note was signed by the president of the dealership, Tam, and Li, as vice-president. *Id*. Over time, the dealership failed to repay the amounts advanced by NextGear as agreed under the Note and NextGear filed a complaint, alleging breach of contract. *Id*. After receiving notice of the complaint, Li called Tam immediately, with the latter informing Li that he had spoken with his attorney, Rahimzadeh, who was attempting to negotiate a settlement with NextGear on Li's behalf. *Id*. at 316. Although Li did not personally retain Rahimzadeh, Rahimzadeh informed Li that he represented Tam and the dealership and "because he represented the dealership, the representation should include [Li]." *Id*. On October 23, 2018, the trial court entered a default judgment against Li. *Id*. On appeal, we concluded that under these circumstances, there was a clear breakdown in communication between Li and Rahimzadeh, where Li believed that Rahimzadeh was representing his interests in the lawsuit with NextGear, and such breakdown in communication resulted in Li not hiring his own attorney to respond to the complaint. *Id*. at 321. We emphasized that there was no evidence of foot dragging by Li as he testified that he immediately contacted Tam and Rahimzadeh after he received the complaint, and, thereafter, he contacted Tam every two weeks to inquire about the status of the litigation and Rahimzadeh's negotiations with NextGear. *Id*. Therefore, we found that "Li understandably,

albeit mistakenly, believed that all was being taken care of and nothing more was required of him" and Li's neglect in failing to file an answer to NextGear's complaint was excusable. *Id.*

[13] Likewise here, we find Appellees' failure to respond to Patel's allegations excusable. Upon receipt of the third-party complaint and after discussion with representatives of the other third-party defendants, Ajinder believed that he was being represented by the same counsel already hired by the other third-party defendants. As all third-party defendants' interests were aligned, as in *Li*, we find Ajinder's belief to be reasonable even though he did not personally retain the attorney. Similarly to *Li*, there is no foot dragging upon the discovery of the default judgment: within thirty-five days of the default judgment, Appellees had acquired representation and sought leave from the trial court to respond to Patel's allegations.

[14] However, "[t]o prevail on a [Trial Rule] 60(B) motion, the petitioner is not only required to show mistake, surprise, or excusable neglect, but also must show that he has a good and meritorious defense to the cause of action." *Flying J, Inc. v. Jeter*, 720 N.E.2d 1247, 1250 (Ind. Ct. App. 1999). A meritorious defense is one which would lead to a different result if the case was tried upon the merits. *Id*. To establish a meritorious defense, a party need not prove the absolute existence of an undeniable defense. *Kretschme*r, 15 N.E.3d at 601. Rather, a party need only make a *prima facie* showing of a meritorious defense. *Id.* While mere conclusory statements will not suffice under the Rule, neither must the petitioner prove an asserted meritorious claim or defense. *Logansport/Cass*

County Airport Authority v. Kochenower, 169 N.E.3d 1143, 1148 (Ind. Ct. App. 2021). Rather, such allegations may be satisfied when the petitioner "state[s] enough facts to give a court an opportunity to measure whether the claim or defense has any potential." *Id*. at 1149 (citing Moore's Federal Practice, at § 60.24[2]). It is for the trial court to determine whether the petitioner has made such a *prima facie* showing. *Id*. Accordingly, "a party seeking relief from a default judgment must state a factual basis for his purported meritorious claim or defense, but at this initial stage such a showing is not governed by the rules of evidence." *Id*.

[15] The third-party complaint filed by Patel against the defaulted Appellees included 4 pertinent Counts, *i.e*, breach of fiduciary duty, conversion, constructive fraud, and unjust enrichment. At the heart of each Count is Patel's allegation that Appellees conspired against him by conducting a secret vote, which was not shared with him and which was in violation of the Operating Agreement, to sell the hotel without his knowledge while letting him continue to pay the contractor renovations after the sale of the hotel. In their motion for relief from the default judgment, Appellees raise as a meritorious defense that their challenged conduct during the sale of the hotel conformed with the terms of the Operational Agreement. The factual basis for Appellees' defense is the Operational Agreement itself, which specifies that members have the exclusive authority to execute documents for the disposal of property. Actions taken by the members, including the disposal of property, requires a majority in interest of the members, with each member, Balraj, Parminder, and Patel, holding one

vote and with Balraj holding a 67% interest percentage, Parminder holding an 18% interest percentage, and Patel holding a 15% interest percentage. As such, Balraj and Parminder (*i.e.,* Ajinder through the power of attorney to act on behalf of Parminder) voting together to consent to the sale equated to a majority. The Operational Agreement stipulates that the members may take action without a meeting if a majority in interest consents by signing a written approval of the action. Accordingly, Appellees provided enough facts to measure whether their defense has "any potential" for the trial court to doubt the propriety of the default judgment and to determine that to vacate the default judgment will not be an empty exercise. *Id*. (citing Moore's Federal Practice, § 60.24[2]). As such, the trial court reasonably could conclude that "under the facts alleged, if credited, a different result could be reached and it would be unjust to allow the judgment to stand." *Id*. Thus, we hold that the trial court's judgment is not clearly against the logic and effect of the facts and circumstances supporting relief from the default judgment, and we affirm the trial court.

CONCLUSION

[16] Based on the foregoing, we conclude that the trial court did not abuse its discretion by granting Appellees' motion for relief from judgment.

[17] Affirmed.

[18] Robb, J. and Molter, J. concur