

COURT OF COMMON PLEAS
CLERMONT COUNTY, OHIO

FILED
2021 JAN -6 PM 2:24
BRIAN T. GILES
CLERK OF COMMON PLEAS COURT
CLERMONT COUNTY, OH

TOTAL QUALITY LOGISTICS, LLC : CASE NO. 2020 CVH 00607
Plaintiff : Judge McBride
vs. :
NETS TRAILER LEASING OF NJ : DECISION/ENTRY GRANTING
LLC : DEFENDANT'S MOTION FOR
Defendant : RELIEF FROM JUDGMENT
:

Brian T. Giles, counsel for the plaintiff Total Quality Logistics, LLC, 1470 Apple Hill Road, Cincinnati, Ohio 45230.

Michael A. Snyder and Marcus A. Miller, counsel for the defendant NETS Trailer Leasing of NJ LLC, 41 South High Street, Suite 2400, Columbus, Ohio 43215.

This cause is before the court for consideration of the defendant NETS Trailer Leasing of NJ LLC's motion to for relief from default judgment. Neither party requested oral argument. The court took the motion under advisement on December 15, 2020.

Upon consideration of the motion, the record of the proceedings, the evidence presented for the court's consideration, the written arguments of counsel, and the applicable law, the court now renders this written decision.

FACTS OF THE CASE AND PROCEDURAL BACKGROUND

The present case stems from allegations concerning an alleged breach of contract regarding trucking logistics services.¹ The plaintiff Total Quality Logistics, LLC is a freight logistics company, and the defendant NETS Trailer Leasing of NJ LLC was its customer.² The plaintiff and defendant entered into a contract for trucking logistics services.³ The plaintiff alleges that the defendant has failed to pay it \$34,419.78 due under the contract.⁴

On July 20, 2020, the plaintiff filed a complaint against the defendant, alleging the following causes of action: (1) breach of contract, (2) action on account, (3) unjust enrichment, and (4) quantum meruit. The plaintiff filed a praecipe requesting certified mail service at “NETS TRAILER LEASING OF NJ LLC 1810 River Road Burlington, NJ 08016.”

Certified mail service was returned to the clerk’s office on July 28th, indicating that service was made on July 24th. The service was made at “1808 River.” Where the recipient’s signature should have been was written: “Nets [an unintelligible letter] 3 C 18 C V 19.” The clerk’s office recorded service as successful and signed by “Covid 19.” The defendant did not file an answer to the complaint.

On September 2, 2020, the plaintiff moved for default judgment. The court issued an entry of default judgment on September 14th. On October 9th, the defendant filed a motion for relief from judgment. The defendant argued that the court should grant the motion because “NETS was not served with the Summons and Complaint and did not become aware of the lawsuit until it received a copy of the Judgment Entry via regular

¹ Compl., ¶ 3.

² Compl., ¶¶ 1, 3.

³ Compl., ¶¶ 4- 5.

⁴ Compl., ¶ 9.

U.S. Mail approximately three weeks ago.”⁵ It posited that lack of successful service enabled this court to grant it relief from judgment under Civ.R. 60(B)(1) and (5). It further submitted that it had a successful defense and compulsory counterclaims.⁶ Finally, the defendant argued that the court lacked personal jurisdiction over it due to lack of proper service of process.⁷

In support, the defendant submitted the affidavit of Robert Laute, the Vice President of Operations at NETS.⁸ Laute averred that the day it was allegedly served with the complaint via certified mail, July 24th, its New Jersey office was open.⁹ However, due to the COVID-19 pandemic, the office was only open to employees, and all entrances were locked to the public.¹⁰ Typically, when the post office delivered certified mail to the defendant, the post office would “notify the office and an agent of NETS would sign the certified mail receipt and deliver the mail to the proper employee at NETS.”¹¹ The day the defendant was served, none of its employees were alerted to a certified mail delivery or asked to sign a certified mail receipt at its office or the post office.¹² Laute did not believe the notation on the certified mail receipt was any of the defendant’s agents or employees’ signature, and the handwriting was unidentifiable.¹³ Furthermore, the defendant did not file an answer because it was unaware of the complaint and did not know of the lawsuit until it received a copy of the default judgment via regular mail.¹⁴

⁵ Defs. Mot., pg. 1.

⁶ Defs. Mot., pg. 4.

⁷ Defs. Mot., pg. 4.

⁸ Defs. Ex. B.

⁹ R. Laute Aff., ¶ 10.

¹⁰ R. Laute Aff., ¶ 10.

¹¹ R. Laute Aff., ¶ 11.

¹² R. Laute Aff., ¶ 12.

¹³ R. Laute Aff., ¶ 13.

¹⁴ R. Laute Aff., ¶¶ 14-15.

After the defendant filed a motion for relief from judgment, it filed an appeal on October 13, 2020. This court then entered a stay of the motion pending appeal on October 19th. On November 9th, the Twelfth District Court of Appeals remanded the matter to this court to hear and rule on the pending motion for relief from judgment.

The plaintiff filed its response in opposition to the defendant's motion for relief from judgment on November 23, 2020. The plaintiff acknowledged that the defendant advanced two claims: (1) the defendant received insufficient service of process, and (2) the defendant's compulsory counterclaims involve damages that exceed the amount of the plaintiff's damages.¹⁵ The plaintiff argued that the defendant cannot satisfy either Civ.R. 60(B)(1) or (B)(5).¹⁶ The plaintiff maintained that the defendant's failure to receive notice of the suit was an internal corporate error because service by certified mail reached the defendant at its usual place of business and was returned to the clerk of courts signed.¹⁷ Moreover, the plaintiff posited that the defendant did not have a meritorious defense to its lawsuit.¹⁸

The defendant filed a reply in support on December 7, 2020. It did not respond to the plaintiff's second argument that its defense is not meritorious. Instead, the defendant revisited its argument that the court lacks personal jurisdiction over it because of failure of service of process. It submits that, due to lack of personal jurisdiction, it need not meet the requirements of Civ.R. 60(B) at all. The defendant acknowledged that the plaintiff properly followed the Rules of Civil Procedure in attempting service, but since service

¹⁵ Pls. Resp., pg. 2.

¹⁶ Pls. Resp., pg. 3.

¹⁷ Pls. Resp., pg. 4.

¹⁸ Pls. Resp., pg. 5.

was not properly effected, it maintained that the court must vacate its default judgment entry.¹⁹

Neither party requested oral argument on the motion. The court took the motion under advisement on December 15, 2020.

LEGAL ANALYSIS

To prevail on a Civ.R. 60(B) motion, the moving party must demonstrate that (1) it has a meritorious defense or claim to present if relief is granted, (2) it is entitled to relief under one of the grounds stated in Civ.R. 60(B)(1) through (5), and (3) the motion is made within a reasonable time.²⁰ Failure to meet any one of these three factors is fatal, for all three must be satisfied in order to gain relief.²¹

Civ.R. 60(B) provides:

“On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(B); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time,

¹⁹ Defs. Reply, pgs. 3-4.

²⁰ *Hussain v. Hussain*, 2020-Ohio-531, 152 N.E.3d 365, ¶ 52 (12th Dist.), citing *GTE Automatic Electric, Inc. v. ARC Industries, Inc.*, 47 Ohio St.2d 146, 351 N.E.2d 113 (1976), paragraph two of the syllabus.

²¹ *Hussain*, 2020-Ohio-531 at ¶ 52, citing *Scrimizzi v. Scrimizzi*, 12th Dist. Warren No. CA2018-11-131, 2019-Ohio-2793, ¶ 51.

and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken.”

As to excusable neglect under Civ.R. 60(B)(1), “[t]he determination of whether neglect was excusable must take into consideration all the surrounding facts and circumstances.”²² “Neglect is inexcusable if a party’s conduct falls substantially below what is reasonable under the circumstances, or if the neglect can be regarded as a ‘complete disregard for the judicial system.’”²³

The grounds for invoking Civ.R. 60(B)(5) must be substantial, and relief is generally to be granted only in unusual or extraordinary circumstances.²⁴ It “is intended as a catch-all provision reflecting the inherent power of a court to relieve a person from the unjust operation of a judgment.”²⁵

The decision to grant or deny a Civ.R. 60(B) motion lies within the trial court’s discretion.²⁶ “The policy in Ohio is to afford Civ.R. 60(B) relief where equitable.”²⁷ Moreover, “[c]ourts must also remain mindful of the admonition that cases should be decided upon their merits, where possible, rather than on procedural grounds.”²⁸

²² *Middletown App., Ltd. v. Singer*, 12th Dist. Butler No. CA2018-08-165, 2019-Ohio-2378, ¶ 20, citing *State ex rel. Doe v. Register*, 12th Dist. Clermont No. CA2008-08-081, 2009-Ohio-2448, ¶ 13.

²³ *Middletown App., Ltd.*, 2019-Ohio-2378 at ¶ 20, quoting *Kay v. Marc Glassman, Inc.*, 76 Ohio St.3d 18, 20 (1996).

²⁴ *Hussain*, 2020-Ohio-531 at ¶ 53, citing *Bowman v. Bowman*, 12th Dist. Warren No. CA98-06-070, 1999 WL 8365, *2 (Jan. 11, 1999). See *Pristine Senior Living & Post-Acute Care of Oxford*, 2020-Ohio-416 at ¶ 16, quoting *Bowman v. Leisz*, 12th Dist. Warren No. CA2014-02-029, 2014-Ohio-4763, ¶ 28 (the grounds for invoking Civ.R. 60(B)(5) must be “substantial”).

²⁵ (Internal quotations omitted.) *Pristine Senior Living & Post-Acute Care of Oxford v. Mistler*, 12th Dist. Butler No. CA2019-05-083, 2020-Ohio-416, ¶ 9, quoting *In re P.L.H.*, 12th Dist. Butler No. CA2018-01-009, 2018-Ohio-3653, ¶ 23.

²⁶ *Hussain*, 2020-Ohio-531 at ¶ 53, citing *Scrimizzi*, 2019-Ohio-2793 at ¶ 51.

²⁷ *Pristine Senior Living & Post-Acute Care of Oxford*, 2020-Ohio-416 at ¶ 17, citing *Robinson v. Miller Hamilton Venture, L.L.C.*, 12th Dist. Butler No. CA2010-09-226, 2011-Ohio-3017, ¶ 14.

²⁸ *Middletown App., Ltd.*, 2019-Ohio-2378 at ¶ 20, citing *Register*, 2009-Ohio-2448 at ¶ 13.

The defendant styled its motion as a motion for relief from judgment, the standard for which is above. It claims that Civ.R. 60(B)(1) and (5) are applicable. However, the defendant also argued in its motion that the default judgment should not be upheld because of lack of service of process.²⁹ This argument is expanded upon in its reply, in which it posits that court's default judgment is void.

"In order to render a valid judgment, a court must have jurisdiction over the defendant in the action."³⁰ A trial court lacks jurisdiction to enter a default judgment against a defendant if a plaintiff fails to perfect service on the defendant, and the defendant has not appeared in the action or waived service.³¹ A trial court's ability to vacate a void judgment does not arise from Civ.R. 60(B), but rather, from an inherent power possessed by the courts in this state.³² Thus, when a party claims a trial court lacked personal jurisdiction due to improper service of process, the appropriate method to challenge such void judgment is through a common law motion to vacate.³³ Where a party has mistakenly attempted to vacate a void judgment through a Civ.R. 60(B) motion, a court should treat the motion as a common-law motion to vacate or set aside the judgment, as "it is not significant that the motion has been styled as a Civ.R. 60(B) motion."³⁴

²⁹ Defs. Mot., pg. 4.

³⁰ *Nix v. Richter*, 12th Dist. Butler No. CA2017-04-043, 2017-Ohio-8431, ¶ 7, citing *Beachler v. Beachler*, 12th Dist. Preble No. CA2006-03-007, 2007-Ohio-1220, ¶ 12.

³¹ *Nix*, 2017-Ohio-8431 at ¶ 7, citing *Bendure v. Xpert Auto, Inc.*, 10th Dist. Franklin No. 11AP-144, 2011-Ohio-6058, ¶ 16.

³² *Nix*, 2017-Ohio-8431 at ¶ 8, citing *Ohio State Aerie Fraternal Order of Eagles v. Alsip*, 12th Dist. Butler No. CA2013-05-079, 2013-Ohio-4866, ¶ 10.

³³ *Nix*, 2017-Ohio-8431 at ¶ 8, citing *Third Fed. S. & L. Assn. v. Taylor*, 10th Dist. Franklin No. 17AP-254, 2017-Ohio-7620, ¶ 11.

³⁴ (Internal quotations omitted.) *Lauver v. Ohio Valley Selective Harvesting, LLC*, 12th Dist. Clermont No. CA2016-11-076, 2017-Ohio-5777, ¶ 16, quoting *Beachler*, 2007-Ohio-1220 at ¶ 19.

“Service of process is consistent with due process standards where it is reasonably calculated, under the circumstances, to give interested parties notice of a pending action and an opportunity to be heard.”³⁵ Civ.R. 4.1 outlines the methods of obtaining service of process within the state of Ohio, and it provides for service by certified mail, personal service, or residential service. Meanwhile, R.C. 1705.06 governs service upon limited liability companies. “Service by certified mail, [e]videnced by return receipt signed by any person, is complete when the clerk notes receiving the return receipt on the docket.”³⁶ “[A] signed receipt returned to the sender establishes a prima facie case of delivery to the addressee. * * * Valid service of process is presumed when any person at the defendant’s address received the certified mail envelope, whether or not the recipient is the defendant’s agent.”³⁷

“The plaintiff in a case bears the burden of achieving proper service on a defendant.”³⁸ Where a plaintiff follows the Rules of Civil Procedure regarding service of process, a rebuttable presumption of proper service arises.³⁹ However, this presumption can be rebutted when a defendant presents sufficient evidence demonstrating that service was not accomplished.⁴⁰ “A failure of service may * * * occur where ‘the defendant does not receive the summons and complaint, even though the plaintiff complied with the

³⁵ *Lauver*, 2017-Ohio-5777 at ¶ 17, quoting *Motorists Mut. Ins. Co. v. Roberts*, 12th Dist. Warren No. CA2013-09-089, 2014-Ohio-1893, ¶ 32.

³⁶ (Internal quotations omitted.) *Lauver*, 2017-Ohio-5777 at ¶ 17, quoting *Chuang Dev. LLC v. Raina*, 10th Dist. Franklin Nos. 15AP-1062 and 16AP-500, 2017-Ohio-3000, ¶ 30.

³⁷ *Lauver*, 2017-Ohio-5777 at ¶ 17, quoting *TCC Mgt. v. Clapp*, 10th Dist. Franklin 05AP-42, 2005-Ohio-4357, ¶ 11.

³⁸ *Treasurer of Lucas Cty. v. Mt. Airy Investments Ltd.*, 6th Dist. Lucas No. L-18-1254, 2019-Ohio-3932, ¶ 13, citing *Cavalry Invest., LLC v. Clevenger*, 6th Dist. Lucas No. L-05-1103, 2005-Ohio-7003, ¶ 10.

³⁹ *Lauver*, 2017-Ohio-5777 at ¶ 18, citing *TCC Mgt.*, 2005-Ohio-4357 at ¶ 13.

⁴⁰ *Lauver*, 2017-Ohio-5777 at ¶ 18, citing *TCC Mgt.*, 2005-Ohio-4357 at ¶ 32. See also *Gaston v. Medina Cty. Bd. of Revision*, 133 Ohio St.3d 18, 2012-Ohio-3872, ¶ 18, fn. 2 (recognizing that “the presumption of valid service is rebuttable”).

civil rules and service was made at an address where the plaintiff could reasonably anticipate that the defendant would receive it.”⁴¹ “In determining whether a defendant has sufficiently rebutted the presumption of valid service, the trial court may assess the credibility and competency of the submitted evidence demonstrating non-service.”⁴²

After reviewing the record, the court finds that proper service was never effectuated. In the present case, the clerk of courts mailed the summons and complaint to the address of the defendant’s usual place of business at 1810 River Road, Burlington, NJ 08016 via certified mail, as permitted by Civ.R. 4.1(A)(1)(a). On July 24, 2020, the return receipt for the certified mail had “Nets [an unintelligible letter] 3 C 18 C V 19” written on it, and it was returned to the clerk of courts on July 28, 2020. The clerk of courts noted the service as successful and indicated it was signed by “Covid 19” on the court docket.

The defendant concedes that the plaintiff followed Civ.R. 4.1, creating a rebuttable presumption of proper service.⁴³ However, the defendant has rebutted the presumption of service. Civ.R. 4.1(A)(1)(a) requires that service be “[e]videnced by return receipt signed by any person.” The World Health Organization has publicly characterized COVID-19 as a global pandemic.⁴⁴

Further, the defendant presented uncontroverted affidavit testimony from Robert Laute that none of the defendant’s employees provided signature. Moreover, Laute averred that the defendant was unaware of the lawsuit until it received this court’s entry of default judgment against it by regular mail. The C V 19 notation makes it unclear

⁴¹ *Hunt v. Arboretum Home Owners Assn.*, 12th Dist. Butler No. CA2020-02-025, 2020-Ohio-4947, ¶ 15, citing *Lauver*, 2017-Ohio-5777 at ¶ 18.

⁴² *Lauver*, 2017-Ohio-5777 at ¶ 18, quoting *Chuang Dev. LLC*, 2017-Ohio-3000 at ¶ 15.

⁴³ Defs. Reply, pgs. 3-4.

⁴⁴ In re Rules of Practice of Supreme Court of Ohio, 158 Ohio St.3d 1469, 2020-Ohio-1461, 142 N.E.3d 706.

whether any addressee at the defendant's place of business was notified of this suit whatsoever. The plaintiff maintains that the defendant's ignorance of this suit was due to its own internal business error. Ultimately, because the defendant had not received the summons and complaint or learned of this lawsuit until after the court entered default judgment, the court finds that the defendant has rebutted the presumption of service.⁴⁵ Because the defendant has overcome the presumption of valid service, the court resolves that the defendant's motion styled relief from judgment should be granted, and its entry of default judgment dated September 14, 2020 should be vacated.

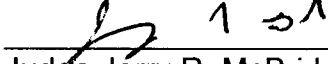
CONCLUSION

For the foregoing reasons, the court finds that the defendant NETS Trailer Leasing of NJ LLC's motion for relief from judgment is well-taken and is hereby granted.

⁴⁵ See, e.g., *Lauver*, 2017-Ohio-5777 at ¶¶ 19-23 (finding the presumption of service upon a statutory agent in accordance with R.C. 1705.06 to be rebutted where the person who signed the certified mail receipt, an employee of defendant and the husband of the statutory agent, did not remit it to the statutory agent and the statutory agent was unaware of the action until collection proceedings began); *TCC Mgt.*, 2005-Ohio-4357 at ¶¶ 14-16 (upholding trial court's determination that the presumption of service that arose after a certified mail receipt had been signed for by a spouse and returned to the clerk of courts had been rebutted where the defendant demonstrated her husband had not advised her of the lawsuit or given her a copy of the summons and complaint); *Mortgage Bank Corp. v. WWIO, Ltd*, 10th Dist. Franklin No. 16AP-44, 2016-Ohio-7069, ¶¶ 21-24 (upholding trial court's determination that the presumption of service had been rebutted where the defendant presented evidence that his wife never informed him of a cross-claim she had received by certified mail and where he demonstrated his wife frequently threw out his mail).

IT IS SO ORDERED.

DATED: 1-5-21


Judge Jerry R. McBride

CERTIFICATE OF SERVICE

I certify that copies of the within Decision/Entry have been sent on this 6th day of January 2021 by e-mail to Brian Giles, Attorney for the Plaintiff, at brian@gilesfirm.com, and to Michael A. Snyder, Attorney for the Defendant, at msnyder@shumaker.com. Printed copies were mailed to Brian Giles, 1470 Apple Hill Road, Cincinnati, Ohio 45230, to Michael A. Snyder, 41 South High Street, Suite 2400, Columbus, Ohio 43215, and to Bennett A. Manning, Magistrate, Twelfth District Court of Appeals, 1001 Reinartz Boulevard, Middletown, Ohio 45042-1924.



Judicial Assistant to Judge McBride