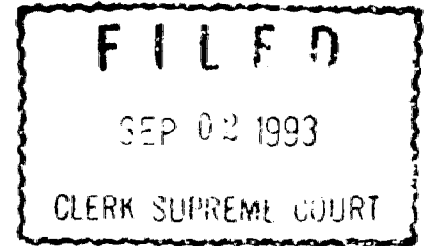


IN THE COURT OF APPEALS OF IOWA

No. 2-578 / 92-892



000077

LUMBERMANS WHOLESALE COMPANY,

Appellee,

vs.

APPLEWOOD PARTNERS, L.P., a Missouri Limited Partnership,

Appellant.

Appeal from the Iowa District Court for Polk County,
Glenn E. Pille, Judge.

Applewood appeals a default judgment entered against it
as a garnishee. **AFFIRMED.**

Louis R. Hockenberg and Dennis L. Puckett of Sullivan &
Ward, P.C., Des Moines, for appellant.

Joseph M. Galloway, Des Moines, for appellee.

Considered by Schlegel, P.J., and Hayden and Sackett,
JJ.

000378

SCHLEGEL, P.J.

The defendant, Applewood Partners (Applewood), appeals a default judgment entered against it as a garnishee. On appeal, Applewood argues the trial court erred in: (1) failing to set aside the default judgment so the merits of the claim could be considered; and (2) permitting Lumbermans to garnish funds which were rental deposits and not Applewood's funds.

This is an appeal of the entry of a default judgment in aid of a levy of execution. The trial court entered judgment upon the proceeds of the garnishment of a bank account belonging to the defendant. The judgment was entered as a result of the failure of the defendant to respond, appear, or answer the petition filed by plaintiff. We affirm.

Applewood, a Missouri limited partnership, was involved in the construction of an apartment complex in Iowa. Lumbermans Wholesale Company (Lumbermans) was a judgment creditor of Halverson Residential Roof (Halverson), having obtained a judgment against that company in Missouri. Lumbermans transferred the judgment to Iowa, and in an effort to levy execution on the judgment, served notice of garnishment upon Applewood, as a debtor of Halverson. Notice of garnishment was served upon Applewood's registered agent, Iowa attorney Marcus Abels, on October 17, 1990. Applewood failed to answer the notice of garnishment, even though effort to get a response was made

through Abels, who assured counsel for Lumbermans that Applewood was aware of the garnishment notice.

After the passage of ten months, during which time Applewood remained in default of answers to the notice of garnishment, Lumbermans filed a direct suit on September 4, 1991, for the amount of the judgment against Halverson under the garnishment. Notice was served as provided in Iowa Code section 617.3 (Iowa's long-arm statute) and as provided in Applewood's "Application for Certificate of Registration as a Foreign Limited Partnership." Once again, Applewood failed to respond in any way, or to answer the petition. On January 6, 1992, judgment by default was entered against Applewood.

On February 7, 1992, Lumbermans caused garnishment of Ankeny State Bank, as a creditor of Applewood, resulting in the seizure of an account in Applewood's name in the amount of \$9,147.28, the amount of the judgment. Thereafter, on February 17, 1992, Applewood filed a motion to vacate judgment and to cease garnishment proceedings. Resistance was filed by Lumbermans and hearing was held on April 1, 1992.

Applewood claims it never received a copy of the original notice and petition and that its failure to answer was inadvertent and due to excusable neglect. Applewood further claims the funds that were attached by garnishment constitute security deposits of the residents of the defendant's apartment complex and are not subject to attachment.

000380

Although it is not apparent from the motion filed by defendant, we assume the grounds for setting aside the default judgment alleged by the defendant are those contained in Iowa Rule of Civil Procedure 236. That rule provides:

On motion and for good cause shown, and upon such terms as the court prescribes, but not ex parte, the court may set aside a default or the judgment thereon, for mistake, inadvertence, surprise, excusable neglect or unavoidable casualty. Such motion must be filed promptly after the discovery of the grounds thereof, but not more than sixty days after entry of the judgment. Its filing shall not affect the finality of the judgment or impair its operation.

A party moving to set aside a default judgment has the burden to plead and prove good cause which requires a finding of mistake, inadvertence, surprise, excusable neglect, or unavoidable casualty. Dew v. American Heritage Life Ins. Co., 431 N.W.2d 8, 9 (Iowa App. 1988) (quoting Williamson v. Casey, 220 N.W.2d 638, 639 (Iowa 1974)).

"Good cause for setting aside a default judgment is a sound, effective, truthful reason, something more than an excuse, a plea, an apology, an extenuation or some justification for the resulting effect." Paige v. City of Chariton, 252 N.W.2d 433, 437 (Iowa 1977). A trial court abuses its discretion if it sets aside a default judgment under rule 236 without some proper basis in the record. See Dew, 431 N.W.2d at 9-10.

In deciding motions to set aside a default, the trial court is vested with wide discretion, and its findings on

000381

disputed facts are entitled to the same weight as a jury verdict. Hansman v. Gute, 215 N.W.2d 339 (Iowa 1974).

The trial court found, from the facts stated in the motion and the attached affidavit, that defendant has not shown good cause for setting aside the default. The court's finding is supported by the record. The defendant, though represented by counsel throughout these proceedings, chose not to defend the suit or to answer the questions requiring answers to the garnishment--despite the fact the record conclusively shows the defendant had notice of each of the proceedings involved in the present case. Defendant has not offered evidence regarding the grounds prescribed in Iowa Rule of Civil Procedure 236 for setting aside defaults.

Defendant also claims the funds garnished cannot be seized to satisfy the judgment in this case because the funds are security deposits of the tenants in the apartment complex owned by defendant. Judging from the record, it appears the money is held in a checking account in the defendant's name. The defendant may have an obligation to establish a separate trust account for the holding of such funds, but such has apparently not been done. An examination of the record clearly reveals the account is a simple checking account owned by the defendant which is subject to execution by garnishment.

Accordingly, we affirm the trial court.

AFFIRMED.