FILED
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CLERK SUPREME COURT

IN THE COURT OF APPEALS OF IOWA

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HENRY JAMES JOHNSON,

Plaintiff-Appellee,

vs.

RALSTON PURINA CO.,

Defendant,

and MIDWEST SOYA, LTD.; and MIDWEST SOYA INTERNATIONAL, INC.,

Defendants-Appellants.

Filed April 23, 1986

6-26
85-779

Appeal from the Iowa District Court for Cerro Gordo County (48577) - B. C. Sullivan, Judge.

Defendant appeals a district court ruling denying its motion to set aside a default judgment. **REVERSED AND REMANDED.**

M. Wayne Oltrogge, Clear Lake, Iowa, for defendants-appellants.

Larry Ivers, Renwick, Iowa, for plaintiff-appellee.

Considered by Oxberger, C.J., Schlegel, and Hayden, JJ.

SCHLEGEL, J.

Defendant Midwest Soya, Ltd., appeals a district court ruling denying its motion to set aside a default judgment. We reverse and remand.

Appellant is a selling agent for Ralston Purina Co., and was named as a defendant, along with Ralston Purina Co., in an action concerning plaintiff's dissatisfaction with a product. An original notice was served upon appellant on July 5, 1985, by personal service on its manager, Mr. Pleggenkuhl. Mr. Pleggenkuhl then contacted Ralston Purina's district manager, Mr. Wilson, concerning the suit. Mr. Pleggenkuhl testified that based upon his conversation with Mr. Wilson at that time, he understood that Ralston Purina Co. would handle the matter and provide legal counsel for all parties.

Defendant Ralston Purina Co. filed its answer in its own behalf on October 16, 1984. On February 22, 1985, a default judgment was entered against appellant. On March 8, 1985, appellant filed a motion to set aside the default judgment. A hearing was held and the motion was denied.

Appellant alleges on appeal that the trial court abused its discretion in denying its motion to set aside the default judgment. It asserts that sufficient evidence was presented to show that the default was a result of mistake, inadvertence, surprise, or excusable neglect with the meaning of Iowa Rule of Civil Procedure 236.

Rule 236 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.

In Flexsteel Ind., Inc. v. Morbern Ind. Ltd., 239 N.W.2d 593, 596 (Iowa 1976), the supreme court stated the rules of review in this type of action:

> "A proceeding under rule 236 is at law. A trial court has wide discretion in making its ruling. The burden is on the movant to plead and prove good cause to set aside the default or judgment thereon. Good cause is shown only if one of the grounds in the rule is proved. We are bound by the trial court findings of fact if supported by substantial evidence. . . . [citing authority]. We view the evidence in its light most favorable to the court's ruling."
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> Likewise, it has been ". . . held several times the trial court has a broad discretion in ruling on such a motion as this and we will not interfere with its order in the absence of a showing of abuse of such discretion. . . . [citing authority]. Also, we are more reluctant to interfere with the grant of such a motion than with its denial. . . . [citing authority]." Insurance Co. of No. Amer. v. Sperry & Hutchison Co., 168 N.W.2d 753, 756 (Iowa 1969).

The question before us is whether appellant carried its burden of proving good cause in not defending its own interest in this action. "A 'good cause' is a sound, effective, and truthful reason. It is something more than an excuse, a plea, apology, extenuation, or some justification, for the resulting effect." It also requires "at least a claimed defense asserted in good faith." Hobbs v. Martin Marietta Co., 257 Iowa 124, 128, 131 N.W.2d 772, 775 (1964); Svoboda v. Svoboda, 245 Iowa 111, 118, 60 N.W.2d 859, 863 (1953).

The trial court's denial of appellant's motion is not supported by substantial evidence. It is clear from the testimony of not only appellant's manager, but also of Mr. Wilson, that there existed a bona fide layman's misunderstanding of who was taking the legal responsibility of this case.

Appellant's manager testified, in part, as follows:

> Q. All right. Now, directing your attention then to July the 5th of 1984, the date that the Sheriff's Department served the papers on to you. What did you do when you got the paper?

A. I called Clyde Wilson, who was the new district man for Ralston Purina. He came down there and I ran a copy for him and I don't know if I gave him the original or the duplicate and through my conversation through Clyde — or Mr. Wilson, he says Ralston Purina will handle it for me; that when they said they would handle it, I felt relieved and good and from that point on I never heard one thing until I got the judgment in the mail in February; that Purina never called me or contacted me, "we are going to Court," or anything.

Mr. Wilson testified also about the apparent misunderstanding on the part of appellant's manager:

Q. And will you tell me what it was that Mr. Pleggenkuhl wanted as it related to this matter here?

A. Okay. I serviced the dealership once a week, if not twice a week, and I came into the dealership one morning and Kim showed me the

THE COURT: Will you tell me who Kim is?

THE WITNESS: Mr. Pleggenkuhl.

THE COURT: All right.

A. Showed me the document that had been delivered by the Sheriff's Department and I told him that I would take a copy of it, mail it to the division office. We'd take care of it.

* * *

Q. All right. Mr. Wilson, let me put the question to you this way: Based on the conversation with Mr. Pleggenkuhl at that time, how would you feel if he said that he understood that your company was going to handle this litigation for his company also? Would he be off-base if he thought that?

THE COURT: Well, you haven't told me who Mr. Pleggen-

MR. OLTROGGE: Mr. Pleggenkuhl is the manager of Midwest Soya.

THE COURT: All right.

A. I don't feel that he would be terribly off-base from the statement.

* * *

> Q. Based on that, based on this conversation that you had with Mr. Pleggenkuhl, would you say that he would be totally unwarranted in assuming that your company was going to handle this litigation for him?
>
> A. I don't think he would be unwarranted to make those assumptions.

Based upon the above testimony, we are unable to agree that the motion to set aside should have been denied. "To be careless and inattentive, as the terms are applied here, means to give the matter no care, no attention, approaching gross neglect or willful procrastination." Hobbs v. Martin Marietta Co., 257 Iowa at 131-132, 131 N.W.2d at 777. Appellant's inaction in this matter does not approach gross neglect or willful procrastination. We therefore hold that "good cause" was shown in this matter.

Our review is not at end, however, with a finding of "good cause" under rule 236. "A movant to set aside a default under rule 236, R.C.P., is required to at least assert in good faith a claimed defense to plaintiff's action or as some courts state at least a prima facie showing of a meritorious defense." Flexsteel, at 599. The court's duty in a proceeding for relief under this rule is to ascertain from the evidence whether facts exist which, if established on a trial on the merits, would prima facie constitute a defense. Id. However, this principle does not require the allegations of a defense which can be guaranteed to prevail at trial. Id. In Flexsteel, the supreme court also cited with approval Springer Corporation v. Herrera, 85 N.M. 201, 203, 510 P.2d 1072, 1074 (1973), wherein the New Mexico Supreme Court stated: "When there is a satisfactory showing of grounds such as excusable neglect (the trial court applying liberal standards in arriving at this determination), then the trial court should also apply liberal standards in determining whether there is a satisfactory showing of meritorious defense." In addition, the Flexsteel court concluded by citing 10 Wright & Miller, Federal Practice and Procedure, section 2697, page 346, and stated:

> The upshot of this and the Iowa authorities cited herein seems to be that whether a meritorious defense has been shown "... must be determined on a case by case basis and with an awareness of the policies behind default judgments and the circumstances under which they should be set aside."

During direct examination at trial, appellant's manager testified that he did not believe plaintiff would be entitled to anything in this action. Based upon the authorities we have cited, we use a liberal standard to determine whether a prima facie meritorious defense has been shown. We conclude that such a defense has been shown in the evidence.

We conclude that appellant has demonstrated "good cause" to set aside the default judgment under Iowa Rule of Civil Procedure 236, and that it has shown a prima facie meritorious defense to plaintiff's action. Therefore, we hold the trial court abused its discretion in denying appellant's motion to set aside the default judgment. We reverse the trial court and remand the case for a trial on the merits.

REVERSED AND REMANDED.