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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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BALL FOUR, INC.	)	Appeal from the Circuit Court of Cook
	)	County
Plaintiff-Appellee,	)	
	)	
v.	)	No. 14 CH 03739
	)	
HURON 100 PARTNERS, LLC and MICHAEL	)	
OKMIN,	)	
	)	Honorable Kathleen M. Pantle
Defendants-Appellants.	)	Judge Presiding.

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JUSTICE GRIFFIN delivered the judgment of the court.  
Presiding Justice Mikva and Justice Pierce concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court did not abuse its discretion when it denied defendants' motion to vacate a default order. The trial court did not abuse its discretion when it refused to give defendants leave to file an untimely answer and motion to dismiss. The trial court did not err when it entered judgment in the amount proven to be plaintiff's loss.
- ¶ 2 Plaintiff Ball Four, Inc. invested \$252,000 as part of a planned construction project in Chicago. Defendants Huron 100 Partners and Michael Okmin were involved in the project. For approximately five years, plaintiff's inquiries about the status of its investment and the status of the project were ignored by defendants, so it filed this lawsuit. Despite being served and there

being numerous court filings in the case, defendants ignored the proceedings for more than two years. Defendants were found to be in default. Defendants finally appeared through counsel on the date of the prove up hearing. The trial court refused to vacate the default order and eventually entered judgment in plaintiff's favor for the full amount of plaintiff's lost investment. Defendants appeal, and we affirm.

¶ 3

### BACKGROUND

¶ 4 Defendant Huron 100 Partners, LLC is a company that was formed to purchase property and build a 40-unit luxury condominium building in Chicago. Defendant Michael Okmin was the managing member of Huron 100. Plaintiff Ball Four, Inc. is a corporation that held a 25% interest in Huron 100.

¶ 5 Although the case was only at the pleading stage, some of the most important facts are undisputed. In furtherance of Huron 100's plan to purchase and develop the property, plaintiff made a \$252,000 investment. At some point after the investment was made, constructive communication between the parties ceased. The project never moved forward. Plaintiff attempted to get access to Huron 100's financial records for inspection to find out what happened to its investment, but the records were never made available. Plaintiff then filed this suit seeking an accounting.

¶ 6 This lawsuit was filed on March 4, 2014. It is admitted that both defendants were properly served with the complaint, but neither appeared nor filed a responsive pleading. Plaintiff filed a motion for default. On June 9, 2014, with defendants still not having appeared, the trial court granted the motion finding both defendants to be in default. The court set a hearing date for a prove up and neither defendant appeared. The court ordered defendants to provide plaintiff with the records it sought within a month.

¶ 7 Six weeks passed and plaintiff filed a petition for a rule to show cause. Plaintiff was

heard on the petition and defendants did not appear at the hearing. The court ordered defendants to show cause as to why they should not be held in contempt for ignoring the court's orders.

Defendants did not respond within the time set by the court. After giving defendants three more opportunities to appear, the court held defendants in contempt of court. Defendants continued not to appear at the next few court dates and, on January 26, 2015, the court indicated that defendants must appear on February 7, 2015 or a warrant would be issued for their arrest.

Defendants did not appear. The court continued the case several more times and issued a writ of body attachment against defendant Okmin on April 15, 2015.

¶ 8 Eight more months passed. Plaintiff sought leave to file an amended complaint. Plaintiff sought money damages from defendants, alleging that it had communicated with Okmin who stated that the project was a total loss. Okmin allegedly still ignored plaintiff's request to access Huron 100's books and records. The amended complaint has four counts. The first count is still for an accounting, but plaintiff added claims for breach of the company's operating agreement, breach of fiduciary duty, and common law fraud. The amended complaint was filed December 15, 2015.

¶ 9 By March 25, 2016, defendants had still not appeared in the case nor had they responded to the amended complaint. Plaintiff filed another motion for default. On May 3, 2016, the court found defendants to be in default again and set a June 3, 2016 prove up date. Finally, more than two years after the case was filed, defendants appeared through counsel on June 3, 2016. The trial court directed defendants to file any motions or papers by June 17, 2016. In the period prescribed by the court, defendants filed a single motion—a motion for a substitution of judge as of right. On the date the motion for substitution was set to be heard, defendants withdrew the motion. The prove up was again delayed.

¶ 10 On July 15, 2016, defendants filed a motion asking the court to vacate the order of default and seeking leave to file pleadings responsive to the amended complaint. The court denied defendants' motion to vacate, ordered it to produce a proper accounting, and eventually set the case for the prove up on March 9, 2017. In denying the motion to vacate, the court explained that substantial justice would not be served by vacating the default after defendants had shown such disregard for the court and an utter lack of diligence in defending the case. The court also noted that plaintiff had expended thousands of dollars as a result of defendants' dilatory conduct.

¶ 11 Defendants retained an accountant and filed an accounting with the court. Then, two days before the prove up hearing was set to take place, defendants filed a motion to reconsider the court's denial of the motion to vacate the default and for leave to file a pleading responsive to the complaint. The prove up hearing went forward. The court rejected defendants' arguments that they were entitled to have the default order vacated. Relying on an affidavit submitted by Michael Balogh, president of plaintiff, the court found that plaintiff was entitled to \$252,500.00—its full initial investment. Balogh averred that plaintiff's investment was a total loss due to defendants' breaches of contract and tortious conduct.

¶ 12 Defendants argued at the hearing that plaintiff should not be entitled to its full investment as damages. Defendants argued that the loss was not attributable to their conduct, and sought to introduce the accounting to negate the well-pleaded facts in the amended complaint to explain how the money was lost. The trial court explained that Okmin "flat out ignored the court." The court explained that the arguments defendants were making at the prove up hearing were "just a rehash of [their] motion to vacate." The trial court reemphasized its disapproval of defendants' brash conduct of disregarding several major court orders but then having Okmin come to court more than two years later to "basically demand that he has a right to try the case and demand that

he has a right to challenge the liability.” The court found Balogh’s affidavit to be sufficient to prove damages and entered judgment in the amount of plaintiff’s investment loss. Defendants appeal.

¶ 13

#### ANALYSIS

¶ 14 On appeal, defendants argue that the trial court erred when it denied their motion to vacate the May 3, 2016 order of default. Defendants concede that they were served and knew about the lawsuit and ignored it for over two years. They maintain that they ignored the case because they did not have any money. Nonetheless, defendants argue that “the court failed to apply familiar principles of substantial justice” when it denied their motion to vacate the default order and then went on to enter judgment in plaintiff’s favor.

¶ 15 Defendants’ motion to vacate the default order was brought under section 2-1301 of the Illinois Code of Civil Procedure (735 ILCS 5/1-101 *et seq.* (West 2016)). Subsection (e) of section 2-1301 states that “The court may in its discretion, before final order or judgment, set aside any default, and may on motion filed within 30 days after entry thereof set aside any final order or judgment upon any terms and conditions that shall be reasonable.” 735 ILCS 5/2-1301(e) (West 2016).

¶ 16 Defendants argue that the trial court “failed to properly apply the factors for deciding a section 2-1301 motion.” In ruling on a section 2–1301(e) motion to vacate, the overriding concern is whether or not substantial justice is being done between the litigants, and specifically whether it is reasonable under the circumstances to compel the nonmovant to proceed to trial on the merits. *In re Marriage of Romashko*, 212 Ill. App. 3d 1018, 1024 (1991). Whether “substantial justice” is being achieved by vacating an order is not subject to precise definition, but relevant considerations include diligence or the lack thereof, the existence of a meritorious

defense, the severity of the penalty resulting from the order or judgment, and the relative hardships on the parties from granting or denying the motion to vacate. *Draper & Kramer, Inc. v. King*, 2014 IL App (1st) 132073, ¶ 23. The determination of whether to grant a motion to vacate is within the sound discretion of the trial court. *W.M. Mold & Tool v. DeRosa*, 251 Ill. App. 3d 433, 439 (1993).

¶ 17 Defendants fault the trial court for focusing so heavily on their admitted lack of diligence. They push their lack of diligence to the side and point to their proposed denials and to facts outside the pleadings that they claim would constitute a defense. But defendants' lack of diligence was severe and cannot be ignored. Defendants were found to be in default in this case in June 2014 and again in May 2016. They were found to be in contempt of court and outright disobeyed the trial court's many directives ordering them to appear in court.

¶ 18 The trial court entered numerous continuances and gave defendants every opportunity to appear in the case and present their defense. Instead, the court had to resort to issuing warrants for Okmin's arrest—and he still did not appear. None of this action compelled defendants to participate. Defendants defied more than a dozen court orders. It was not until the very day that the prove up was set to proceed that defendants did anything to contest a judgment. Even then, when the trial court continued the case for two weeks and gave defendants the opportunity to file any motions or papers they wanted to file, defendants only filed one— a meritless motion to substitute judge, which they withdrew. Defendants filed a motion to vacate the default almost a month later and beyond the time given by the court. The trial court was entitled to decide that it was too little, too late.

¶ 19 With the goal of doing substantial justice between the parties, a court should consider all events leading up to the judgment because what is just and proper must be determined by the

facts of each case. *In re Marriage of Harnack & Fanady*, 2014 IL App (1st) 121424, ¶ 45.

Defendants disregarded the proceedings and the court for two years exhibiting total indifference.

The trial court was entitled to give significant weight to defendants' lack of diligence in its determination of whether substantial justice would be done by vacating the default.

¶ 20 Also, defendants acknowledge that at the time their motion to vacate was heard, they had not prepared an accounting. They claim that their proposed answer and proposed motion to dismiss demonstrated the merits of their defense. However, the motion to vacate does not explain why plaintiff's \$252,000 investment was a total loss. Defendants offer no persuasive explanation as to how they might escape liability from plaintiff's claims. Their supposed attempt at an explanation is conclusory, lacking meaningful legal or factual support. And, in their motion to vacate the default, defendants did not even attempt to explain their total lack of diligence.

Although defendants requested leave to answer some of plaintiff's claims and to file a motion to dismiss its other claims, the trial court denied defendants' request to file their untimely responsive pleadings.

¶ 21 The Illinois Supreme Court Rules give the trial court authority to allow or prohibit untimely pleadings. "The court, for good cause shown on motion after notice to the opposite party, may extend the time for filing any pleading or the doing of any act which is required by the rules to be done within a limited period, either before or after the expiration of the time." Ill. S. Ct. R. 183 (eff. Feb.16, 2011). The crucial wording is "good cause," in that the movant must demonstrate good cause for requiring an extension. *Heritage Pullman Bank & Trust Co. v. Carr*, 283 Ill. App. 3d 472, 482 (1996). Inadvertance, mistake, or absence of prejudice to the opposing party or inconvenience to the circuit court does not constitute "good cause." *Id.* Instead, in order to demonstrate good cause, the movant has the burden to show "clear,

objective reasons why it was unable to meet the deadline and why any extension of time should be given.” *Vision Point of Sale Inc. v. Haas*, 226 Ill. 2d 334, 348 (2007). Whether to grant an extension of time to file an untimely pleading is within the sound discretion of the trial court. *Id.* at 353-54.

¶ 22 Defendants fully admit the reason that they did not timely respond to any matter in the case was that they did not have money. That is not a justifiable excuse to explain why they were unable to meet the numerous deadlines to respond or simply appear in court as ordered.

Defendants admit that they made a conscious choice not to participate; it was intentional noncompliance—indifference. They were not unable. Lack of funds does not constitute good cause that would excuse ignoring the court for two years.

¶ 23 When defendants asked the trial court for leave to file untimely pleadings in their motion to vacate the default, they did not even attempt to show good cause for their repeated noncompliance. Defendants have wasted both the court and plaintiff’s time and they are not entitled to now demand that the proceedings go forward as usual from the pleading stage. The circuit court has the discretion to manage its docket to ensure that there is no undue delay in the resolution of the proceedings before it. *Bank of America, N.A. v. Land*, 2013 IL App (5th) 120283, ¶ 24. Defendants’ utter disregard for the court in the face of the court’s patience and generous opportunities to defend was flagrant. The trial court acted well within its discretion when it denied defendants’ 11th-hour attempt to repel a judgment and participate in these proceedings.

¶ 24 Defendants’ remaining arguments concern the issue of damages. Defendants argue that the default sanction is too severe. The severity of the penalty resulting from the default order or judgment is one of the factors the court must consider when deciding whether vacating the



default would do substantial justice between the parties. See *Draper & Kramer*, 2014 IL App (1st) 132073, ¶ 23.

¶ 25 The record demonstrates and there is no issue that, in 2009, plaintiff made a \$250,000 investment, entrusted to defendants. Despite plaintiff's attempts, it received virtually no response from defendants on the whereabouts of its funds or the progress of the project over a five-year period. Plaintiff had to file suit and make dozens of court filings over another two-year period before getting any response from defendants. Still, the only answer that plaintiff essentially received was that its investment was lost. Defendants have known the amount that plaintiff was seeking for a long time. They have received default notices and ignored them. The parties are sophisticated companies engaged in multi-million dollar construction projects. Other than simply pointing to the number itself, defendants have done nothing to show that the trial court abused its discretion when it entered a judgment for the amount plaintiff sought and the amount defendants admit was lost. No one factor is dispositive in determining whether substantial justice is being done, all relevant circumstances must be considered. *In re Haley D.*, 2011 IL 110886, ¶ 72. It would be manifestly unfair to require plaintiff to return to the beginning stages of this case when it has actively pursued its claims and defendants have actively avoided the litigation for over two years.

¶ 26 Defendants argue that at the prove up hearing the trial court should have considered the accounting they provided and found that the lost investment was attributable to causes other than defendants. The accounting was filed after defendants were found to be in default and after the motion to vacate the order of default was denied. In any event, defendants maintain that the accounting demonstrates that "all of Huron's expenditures were made for the purpose of the project." Defendants go on to conclude that "the judgment on the breach of fiduciary duty,

breach of contract and fraud counts rest on the conclusory assertions that no part of plaintiff's \$252,000 investment was used for a proper purpose." With their accounting, defendants are trying to make out the case that plaintiff cannot prove that it breached any duty owed and that there is a lack of causation. By virtue of defendants' default, plaintiff's loss was deemed to be wrongfully caused by defendants. A challenge to causation was improper at the prove up because an order of default is an order that precludes the defaulting party from making further defenses to liability. *Jackson v. Hooker*, 397 Ill. App. 3d 614, 620 (2010).

¶ 27 Defendants claim that they were entitled to an evidentiary hearing at which they could prove that the losses were not their fault. Defendants claim that they can prove with their accounting that they used the funds that plaintiff invested for proper purposes. But those are defenses to liability. Defendants had more than two years to raise those defenses. The trial court refused to allow defendants to answer the amended complaint and interpose those defenses and all that was left to do was for plaintiff to prove its losses. Plaintiff did so, and the trial court did not abuse its discretion when it denied the motion to vacate, denied leave to answer, and did not err when it entered judgment in the amount of plaintiff's full investment loss.

¶ 28 CONCLUSION

¶ 29 Accordingly, we affirm.

¶ 30 Affirmed.