[Cite as *Jackson v. Big O's Ltd.*, 2010-Ohio-1779.]

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
ERIE COUNTY

Clint Jackson dba Marvalous Eastwoodtainment

Appellee

v.

Big O's Ltd.

Appellant

Court of Appeals No. E-09-043

Trial Court No. CVI 0801633

DECISION AND JUDGMENT

Decided: April 23, 2010

* * * * *

Clint Jackson, pro se.

Loretta Riddle, for appellant.

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PIETRYKOWSKI, J.

{¶ 1} Defendant-appellant, Big O's Ltd., appeals the June 26, 2009 judgment of the Sandusky Municipal Court, Small Claims Division, which denied appellant's Civ.R. 60(B) motion to vacate the default judgment entered in favor of appellee, Clint Jackson

dba Marvalous Eastwoodtainment.[1] Because we find that appellant was entitled to relief from the judgment erroneously entered against it, we reverse.

{¶ 2} The relevant facts of this case are as follows. On July 1, 2008, appellee commenced an action in Sandusky Municipal Court, Small Claims Division, for property allegedly lost or stolen from Big O's Sports Bar & Grill. Appellee listed the property value as $125. Appellee captioned the complaint as: plaintiff "Clint Jackson" and on the line below "Marvalous Eastwoodtainment" and defendant "Big O's Ltd." and on the line below "Racquel Pace." Appellee listed Big O's business address. On the affidavit of appellee's claim it lists the plaintiff as "Clint Jackson, dba Marvalous Eastwoodtainment" and the defendant as "Racquel Pace, dba Big O's Ltd." Big O's business address was listed.

{¶ 3} According to the complaint, appellee participated in Big O's Sports Bar & Grill's barbecue event and provided various door prizes to be raffled off. The door prizes were stolen and Racquel Pace, presumably an employee of Big O's, declined to waive appellee's $100 entrance fee.

{¶ 4} Racquel Pace was served with a copy of the complaint and appeared at the initial pretrial on July 31, 2008. According to the magistrate's decision, appellee requested a 30 day continuance in order to gather receipts for the items allegedly stolen

[1]We acknowledge that appellee filed an appellate brief in this matter. However, appellee's brief does not contain a proof of service stating the date and manner of service of the brief on appellant. Accordingly, it will not be considered in this appeal. See App.R. 13(D).

from Big O's. On that same date, appellee submitted a letter and photocopies of the disc jockey business' promotional items that were allegedly lost or stolen (an insulated cup and backpack bearing the company logo.)

{¶ 5} A notice of the September 4, 2008 hearing was sent to "Racquel Pace dba Big O's Ltd." at Big O's business address. It was returned to the court as "Not Deliverable as Addressed." A notation by a court employee on the returned envelope, which was filed into the record, states "8-27-08 Called Big O's- gave Court deft's home address." Thereafter, on September 4, 2008, the defendant failed to appear and appellee was granted a default judgment against Racquel Pace dba Big O's Ltd. On September 26, 2008, an order of garnishment was filed in the amount of $211 against Racquel Pace, dba Big O's Ltd. and listed Pace's home address. The money was not recovered and numerous additional garnishment orders, listing different banks, were filed.

{¶ 6} On October 31, 2008, appellee sent a letter to the court requesting that the garnishment orders list Big O's Ltd. rather than Racquel Pace. Appellee stated that his complaint listed Big O's and that he only put Pace's name on the complaint as the company representative that he had contact with. Appellee further claimed that he never provided Pace's home address to the court and that it was the court's error. Following a hearing on the motion/letter, the magistrate found that because Big O's was listed on the complaint and served, that it was a party to the case. The magistrate then granted appellee's motion. The name of the judgment debtor was changed to Big O's.

{¶ 7} On December 30, 2008, Big O's filed a limited appearance in the case to contest the court's jurisdiction and moved to vacate the magistrate's decision. Appellant argued that appellee, a non-attorney, was advocating for Marvalous Eastwoodtainment and, thus, was engaged in the unauthorized practice of law. Appellant further argued that by signing a contract absolving Big O's from liability for lost or stolen items, appellee assumed the risk of loss. Further, appellant asserted that there could be no default judgment because Racquel Pace appeared at the initial hearing. Appellant argued that the trial court lacked the authority to substitute Big O's Ltd. in the judgment when the judgment was against Racquel Pace dba Big O's Ltd. Finally, appellant argued that it was not properly served with notice of the complaint. Appellee opposed the motion.

{¶ 8} On June 26, 2009, the court denied appellant's motion and this appeal followed.

{¶ 9} Appellant now raises the following five assignments of error for our consideration:

{¶ 10} "Assignment of Error No. I:

{¶ 11} "The trial court erred by allowing a non-attorney to represent the interest of a corporation, as such all actions are void.

{¶ 12} "Assignment of Error No. II:

{¶ 13} "The trial court erred and abused its discretion by not granting Big O's Ltd.'s motion to vacate pursuant to Civ.R. 60(B).

{¶ 14} "Assignment of Error No. III.

{¶ 15} "The trial court erred in granting a default judgment when a defendant appeared in court.

{¶ 16} "Assignment of Error No. IV.

{¶ 17} "The court errs and abuses its discretion by adopting an improper magistrate's decision which modifies an existing judgment by the trial judge.

{¶ 18} "Assignment of Error No. V.

{¶ 19} "Putative defendant Big O's Ltd. is not properly served when Big O's Ltd. is a separate entity and not 'Racquel Pace dba Big O's Ltd.'"

{¶ 20} In appellant's first assignment of error, it argues that appellee Clint Jackson, a non-attorney, was not permitted to represent Marvalous Eastwoodtainment as he engaged in "acts of advocacy." In *Cleveland Bar Assn. v. Pearlman*, 106 Ohio St.3d 136, 2005-Ohio-4107, syllabus, the Supreme Court of Ohio held:

{¶ 21} "A layperson who presents a claim or defense and appears in small claims court on behalf of a limited liability company as a company officer does not engage in the unauthorized practice of law, provided that the individual does not engage in cross-examination, argument, or other acts of advocacy."

{¶ 22} In the present case, it is not disputed that Mr. Jackson is an officer of Marvalous Eastwoodtainment. Appellant argues that Jackson impermissibly advocated on behalf of the company. Appellant argues that appellee introduced evidence in support of the company's claim. At the initial pretrial, the court requested documentation to

support appellee's claim; Jackson provided the documentation. We do not believe that this constituted an act of advocacy. Appellant further argues that appellee's filing of the motion to modify the judgment was an act of advocacy. Though a close case, we find that Jackson's post-judgment letter/motion to the court was an attempt to correct an error he perceived to have been made by the court and, as discussed infra, it should not have been granted. Appellant's first assignment of error is not well-taken.

{¶ 23} Appellant's second assignment of error argues that the trial court abused its discretion when it denied appellant's motion to vacate pursuant to Civ.R. 60(B) which provides, in relevant part:

{¶ 24} "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; * * * or (5) any other reason justifying relief from the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2) and (3) not more than one year after the judgment, order or proceeding was entered or taken. A motion under this subdivision (B) does not affect the finality of a judgment or suspend its operation."

{¶ 25} Reviewing the record in this case we must conclude that there were several mistakes made during the course of this case. First, appellee's complaint was not clear when he listed Big O's Ltd. and, on the next line, Racquel Pace as the defendant. However, appellee did list Big O's Ltd. and their business address. Next, after notice of the September 4, 2008 hearing failed at Big O's business address, a court employee

contacted Big O's and then sent the notice to Racquel Pace's home address. Thereafter, a default judgment was entered against Ms. Pace despite her appearance at the initial pretrial. After final judgment was entered against Ms. Pace and several garnishment orders were issued, appellee discovered that he could not collect against her and informed the court that Big O's was the proper party. The court then modified the judgment as against Big O's Ltd. This was also in error.

{¶ 26} Based on the foregoing, we find that the trial court abused its discretion when it denied appellant's Civ.R. 60(B) motion for relief from judgment. Appellant's second assignment of error is found well-taken.

{¶ 27} Based on our disposition of appellant's second assignment of error, we find that the remaining assignments of error are moot.

{¶ 28} On consideration whereof, we find that substantial justice was not done the party complaining and the judgment of the Sandusky Municipal Court, Small Claims Division, is reversed and the matter is remanded for further proceedings. Pursuant to App.R. 24, appellee is ordered to pay the costs of this appeal.

JUDGMENT REVERSED.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See, also, 6th Dist.Loc.App.R. 4.

Peter M. Handwork, J.

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JUDGE

Mark L. Pietrykowski, J.

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JUDGE

Thomas J. Osowik, P.J.
CONCUR.

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JUDGE