[Cite as *Powers, L.L.C. v. Elm & Assocs. L.L.C.*, 2026-Ohio-4624.]

IN THE OHIO COURT OF APPEALS
FIFTH APPELLATE DISTRICT
FAIRFIELD COUNTY, OHIO

POWERS LLC Plaintiff - Appellee -vs- ELM AND ASSOCIATES LLC, Defendant - Appellee and ERIN MORROW, Defendant - Appellant	Case No. 2026 CA 00026 Opinion & Judgment Entry Appeal from the Court of Common Pleas of Fairfield County, Case No. 2025 CV 01213 Judgment: Reversed and remanded Date of Judgment: November 20, 2026

BEFORE: Andrew J. King, Robert G. Montgomery, and David M. Gormley, Judges

APPEARANCES: Shane P. Benson (Benson & Sesser, LLC), Chillicothe, Ohio, for Plaintiff-Appellee; Erin Morrow, Lancaster, Ohio, briefed the case on her own behalf as Defendant-Appellant.

Gormley, J.

{¶1} Appellant Erin Morrow argues that the trial court should have granted a motion for relief from judgment that she filed under Civil Rule 60(B). Because we agree with Morrow that the trial court applied the wrong standard when analyzing that motion, we reverse the judgment and remand the case for further trial-court proceedings.

The Key Facts

{¶2} Powers LLC twice sued both Elm and Associates LLC and Morrow — who was Elm's majority shareholder and founder — to recover money that Powers had lent to Elm under a loan agreement. In the first suit, the trial court dismissed the sole claim against Morrow herself, and Powers then voluntarily dismissed the balance of the case.

{¶3} When Powers later filed a second lawsuit against the same defendants, Morrow failed to respond, which prompted the trial court to enter a default judgment against her. The next day, Morrow asked the trial court for permission to file a motion to dismiss mirroring the one that she had filed in response to the first lawsuit, and soon thereafter she also filed a Civ.R. 60(B) motion asking for relief from the default judgment.

{¶4} The trial court denied Morrow's requests, finding that she was not entitled to relief from the default judgment because, in the trial court's view, she had no meritorious defense to the claims alleged against her in Powers's second complaint. Morrow now appeals the denial of her Rule 60(B) motion.

The Trial Court Erred by Finding That Morrow's Asserted Defense Was Not a Meritorious One

{¶5} We employ an abuse-of-discretion standard when reviewing a trial court's decision to deny a Civ.R. 60(B) motion. *Maynard v. Scales*, 2025-Ohio-5124, ¶ 15 (5th Dist.).

{¶6} To obtain relief under that rule, the moving party must demonstrate three things. *GTE Automatic Elec., Inc. v. ARC Industries, Inc.*, 47 Ohio St. 2d 146, 150–151 (1976). First, the movant must identify a meritorious defense to the plaintiff's claims. *Id.* Second, the movant, choosing from among the five options listed in Civ.R. 60(B), must point to one or more reasons why relief from the judgment should be granted. *Id.* Third, the movant's request must be timely. A movant's failure to meet any of the three requirements justifies denial of the motion. *Thompson v. Dennis*, 2023-Ohio-3946, ¶ 29 (5th Dist.) (citations omitted).

{¶7} Today's appeal focuses on the first of those requirements: the Civ.R. 60(B) movant's duty to identify a meritorious defense to the plaintiff's claims. To point to a meritorious defense, a defendant need only allege facts that, if true, support a defense to the allegations in the complaint. *Rose Chevrolet, Inc. v. Adams*, 36 Ohio St.3d 17, 20 (1988). That

identified defense need not be one that is likely to be a winner at trial. *See Nationstar Mtge., LLC v. Abston*, 2019-Ohio-3003, ¶ 14 (2d Dist.) ("A party seeking relief from judgment is not required to prove that he or she will prevail on the meritorious defense; the movant is merely required to allege the existence of such a defense") (quotations omitted); *Daimler Chrysler Fin. v. L.N.H., Inc.*, 2012-Ohio-2204, ¶ 12 (8th Dist.) ("to demonstrate a meritorious defense, the movant must merely allege operative facts that would support a meritorious defense, not prove that he or she will prevail on that defense"); *Amzee Corp. v. Comerica Bank-Midwest*, 2002-Ohio-3084, ¶ 20 (10th Dist.) ("the adequately pleaded assertion of one or more affirmative defenses will raise genuine issues of material fact in relation to the averments in the complaint and, therefore, be meritorious").

{¶8} In ruling on a Civ.R. 60(B) motion, courts should not weigh the evidence or determine the likely success of the plaintiff's claims or the movant's alleged defense. *Meglan, Meglan & Co. v. Bostic*, 2006-Ohio-2270, ¶ 10 (10th Dist.). The movant "need not establish ultimate success on the merits" when identifying its allegedly meritorious defense. *Law Offices of Robert E. Soles v. Swinderman*, 2026-Ohio-730, ¶ 10 (5th Dist.) (quotations omitted). *See also Meglan* at ¶ 10 (explaining that Civ.R. 60(B) movants' "burden at the hearing was merely to demonstrate the existence of a meritorious defense" rather than "establish the merit" of it).

{¶9} Here, Morrow offered what she says is a meritorious defense by alleging that she was not a party to the loan agreement between Powers and Elm. She could not be liable for Elm's debts, her motion claimed, where she herself never undertook any obligation to pay them.

{¶10} To be sure, the complaint alleged that defendant Elm's corporate veil should be pierced and that Morrow herself should be held personally liable for that company's debts.

Yet, as the cases above indicate, a trial court, when ruling on a Civ.R. 60(B) motion, is not to determine which party will prevail at trial. Rather, the question is simply whether the asserted defense raises material factual questions about the merits of the complaint's allegations. Morrow's Civ.R. 60(B) motion did that, arguing that Elm's corporate debts are Elm's responsibility to pay and that she, as a non-party to the agreement, cannot be found liable on it.

{¶11} So where did the trial court go astray ? In that court's view, the complaint filed by Powers against Morrow alleged sufficient facts to survive a motion to dismiss under Civ.R. 12(B)(6), and therefore Morrow had no meritorious defense to that complaint. Yet just because a complaint alleges facts sufficient to survive a motion to dismiss does not mean that the defendant, at trial, will be unable to prove the merits of any asserted defenses. The trial court in this case appears to have found no merit to Morrow's defense just because she could not show as a matter of law that she should prevail on it at the pleadings stage. That is not the Civ.R. 60(B) standard when a trial court is weighing whether a proposed defense is meritorious. *See Amzee Corp.*, 2002-Ohio-3084, at ¶ 20 (10th Dist.) (explaining that an asserted Civ.R. 60(B) defense "is meritorious if it is not a sham and when, if true, it states a defense in part, or in whole, to the claims for relief set forth in the complaint").

{¶12} The complaint alleged, in essence, that Morrow is liable for Elm's debts. Morrow, in her Civ.R. 60(B) motion, alleged that she is not liable for those debts because she never agreed to pay them. At the pleadings stage, neither party is obligated to show that its factual allegations will prove to be true, and yet the trial court found that Morrow could never prevail at any trial. That approach placed a burden on Morrow that Civ.R. 60(B) does not impose. Her asserted defense was, under that rule, a meritorious one.

{¶13} The judgment of the Court of Common Pleas of Fairfield County is reversed, and the case is remanded to the trial court so that court can evaluate whether Morrow has presented sufficient proof on the two other necessary prongs of her Civ.R. 60(B) motion: timeliness and a valid reason why her motion should be granted.

{¶14} Any court costs must be paid by plaintiff Powers LLC.

By: Gormley, J.;

King, P.J. and

Montgomery, J. concur.