

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-383

APRIL TERM, 2005

Bruce A. Hopkins, Inc. and Bruce A. Hopkins	}	APPEALED FROM:
	}	
	}	
v.	}	Windsor Superior Court
	}	
Loring Corp. d/b/a Loring Bank Stations and Samuel D. Hamill	}	DOCKET NO. 106-2-04 Wrcv
	}	
		Trial Judge: Theresa S. DiMauro

In the above-entitled cause, the Clerk will enter:

Defendant Samuel D. Hamill appeals the superior court's order denying his motion to strike a default judgment entered in favor of plaintiffs. We affirm.

Plaintiffs filed a complaint in February 2004 alleging that defendant Loring Corporation owed money on an account due, and that defendant Hamill, the owner of the corporation, was liable based upon his personal guarantee. Defendants were properly served with the complaint on February 18. On March 9, defendants filed a motion to dismiss, claiming that the court lacked personal jurisdiction over defendant Hamill because he had moved to New Hampshire and did not have sufficient ties to Vermont to support a suit against him here. The superior court denied the motion on March 31, warning defendant Hamill that if he wished to represent the Loring Corporation, he would have to meet the standards set forth in 11A V.S.A. § 3.02. On May 4, 2004, plaintiffs filed a motion for default judgment because defendants had failed to file an answer to the complaint. On May 24, the superior court denied the motion because the affidavit of nonmilitary service was stale. Plaintiffs renewed their motion on June 3 along with a new affidavit, and the court granted the motion on June 14. On June 17, defendants filed a motion to strike the default judgment, stating that they had not been provided enough time to respond. The superior court denied the motion, concluding that the record affirmatively showed that defendants had been given more than sufficient time to respond to plaintiffs' complaint, and that defendant Hamill's pro se status did not excuse his failure to respond to the complaint.

On appeal, defendant argues that the superior court abused its discretion by refusing to strike the default judgment, considering that he is a pro se litigant unfamiliar with court rules, and that his valid counterclaims should be decided on the merits. We find no abuse of discretion. "Generally, the rules relating to default judgments should be liberally construed in favor of defendants, and of the desirability of resolving litigation on the merits, to the end that fairness and justice are served." Desjarlais v. Gilman, 143 Vt. 154, 158-59 (1983). Nevertheless, the trial court has broad discretion in deciding cases based on default after considering whether the defaulting party's failure to respond was the result of mistake or inadvertence, whether the neglect was excusable under the circumstances, and whether that party had demonstrated a meritorious defense to plaintiffs' claims. Id. at 157, 159. As for defendant's pro se status, while we will not "permit unfair imposition or unconscionable advantage to be taken of one who acts as his own attorney," pro se litigants are still "bound by the ordinary rules of civil procedure." Vahlteich v. Knott, 139 Vt. 588, 590-91 (1981) (internal quotation marks and citation omitted).

Here, the record and the trial court's undisputed findings demonstrate that defendant is an experienced

businessmen who was involved in two other pending lawsuits in which he was represented by counsel, that he demonstrated his ability to understand the rules through his filings in this case, that he had not responded to the superior court's warnings regarding his representation of the corporation, that he had more than adequate time to respond to plaintiffs' complaint, and that he did not raise any counterclaims until after the default judgment was entered, even though those claims were available to him at the onset of plaintiffs' lawsuit. Moreover, there is absolutely no evidence in the record suggesting that unfair imposition or unconscionable advantage was taken of defendant in this case. Under these circumstances, the superior court did not abuse its discretion in denying defendant's motion to strike the default judgment.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned