

DOCKET NO. HHD CV-23-6165978 S : SUPERIOR COURT
AMERICAN ZURICH INSURANCE COMPANY : J. D. OF HARTFORD
VS. : AT HARTFORD
MEL HOME BUILDING, LLC,, ET AL : MAY 21, 2024

MEMORANDUM OF DECISION

This worker's compensation insurance collection matter is before the court concerning the defendants' motion to open judgment of default (#116) (motion to open), which was presented for adjudication on the short calendar for April 22, 2024. The plaintiff filed an objection (#117).

I

Background


In its three count complaint, dated February 13, 2023, the plaintiff alleges that it provided worker's compensation insurance coverage to defendant Mel Home Building, LLC (also referred to below as the LLC) between September 2019 and September 2020, for which the principal sum of \$72,205.00, plus interest, remains due and owing. In addition, it alleges that defendant Anderson J. Santos, the sole member and manager of the LLC, is personally liable for the debts due from the LLC and has been unjustly enriched to the monetary detriment of the plaintiff.

According to the return of service, the defendants were served with process on February 21, 2023. See #100.30.

On April 12, 2023, the defendants were defaulted for failure to appear. See #101.86.

On October 2, 2023, the plaintiff's motion for judgment on default was granted as to defendant Mel Home Building, LLC, and denied as to defendant Santos. See #103.86. As to the

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counts against defendant Santos, the court (*Klau, J.*) stated that the plaintiff may request a hearing in damages. See 103.86.

After a hearing in damages, by order dated January 26, 2024, the court (*Shapiro, J.T.R.*) entered judgment against defendant Santos. See #113.

In support of the motion to open, which was filed on April 1, 2024, and is based on Practice Book Sec. 17-43, the defendants filed the affidavit of defendant Santos. Therein, he avers that he has been saving up monies to hire an attorney, which he recently did; that he was not aware that the matter went to judgment as he did not receive any documents from the plaintiff or its lawyers about the case going to judgment; and he became aware of this after his bank account was frozen.

II

Discussion

A

The Supreme Court recently addressed the standards which apply to a motion to open a judgment. See *Mercedes-Benz Financial v. 1188 Stratford Ave., LLC*, 348 Conn. 796, 312 A.3d 16 (2024). There, the court stated that “[t]he threshold determination of whether a motion to open is timely filed is critical because it determines which of two different legal standards the trial court must apply when ruling on the motion. First, . . . a timely motion to open is governed by [General Statute] § 52-212 (a)” *Id.*, 312 A.3d 22. See General Statutes § 52-212 (a), which requires a two part showing.¹

¹Section 52-212 provides, in relevant part,: “(a) Any judgment rendered or decree passed upon a default or nonsuit in the Superior Court may be set aside, within four months following the date on which the notice of judgment or decree was sent, and the case reinstated

Practice Book § 17-43 (a) contains similar terms: “(a) Any judgment rendered or decree passed upon a default or nonsuit may be set aside within four months succeeding the date on which notice was sent, and the case reinstated on the docket on such terms in respect to costs as the judicial authority deems reasonable, upon the written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of such judgment or the passage of such decree, and that the plaintiff or the defendant was prevented by mistake, accident or other reasonable cause from prosecuting or appearing to make the same. Such written motion shall be verified by the oath of the complainant or the complainant's attorney, shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the plaintiff or the defendant failed to appear.”

Section 52-212 requires that a motion to open be filed within four months from when judgment was rendered. See *Mercedes-Benz Financial v. 1188 Stratford Ave., LLC*, supra, 312 A.3d 20.

“This rule is motivated by the policy that [o]nce a judgment [is] rendered it is to be considered final and it should be left undisturbed by [posttrial] motions except for a good and compelling reason. . . . Otherwise, there might never be an end to litigation. . . . [T]o prevail on

on the docket . . . , upon the complaint or written motion of any party or person prejudiced thereby, showing reasonable cause, or that a good cause of action or defense in whole or in part existed at the time of the rendition of the judgment or the passage of the decree, and that the plaintiff or defendant was prevented by mistake, accident or other reasonable cause from prosecuting the action or making the defense. . . .

(c) The complaint or written motion shall be verified by the oath of the complainant or his attorney, shall state in general terms the nature of the claim or defense and shall particularly set forth the reason why the plaintiff or defendant failed to appear.”

a motion to open timely filed within the four month window, § 52-212 (a) requires that the movant make a two part showing: (1) that a good defense, the nature of which must be set forth, existed at the time the trial court rendered judgment, and (2) that the movant was prevented from making that defense because of mistake, accident, or other reasonable cause.” (Citation omitted; internal quotation marks omitted.) *Id.*, 22.

“Second, . . . once the § 52-212 (a) four month window expires, the trial court has inherent authority, independent of [any] statutory provisions, to open a judgment obtained by fraud, in the actual absence of consent, or by mutual mistake at any time. . . . The two part test prescribed by § 52-212 (a) does not apply to untimely motions filed outside the four month window. Rather, to prevail on a motion to open filed outside this window, a movant must establish that the judgment was obtained by fraud, duress or mutual mistake or, under certain circumstances, where newly discovered evidence exists to challenge the judgment.” (Citations omitted; internal quotation marks omitted.) *Id.*

Here, the motion to open was timely filed as to the judgment entered against defendant Santos since it was filed on April 1, 2024, which was within four months of the judgment as to him on January 26, 2024. The motion to open was not filed within four months of the judgment against defendant Mel Home Building, LLC on October 2, 2023. Accordingly, in considering the motion to open, as explained above, different standards are applicable to each defendant.

Concerning defendant Santos, the test set forth in Section 52-212 is applicable. “Since the conjunctive ‘and’ meaning ‘in addition to’ is employed between the parts of the two-prong test, both tests must be met.” (Internal quotation marks omitted.) *Berzins v. Berzins*, 105 Conn. App. 648, 654, 938 A.2d 1281, cert. denied, 289 Conn. 932, 958 A.2d 156 (2008); see *Flater v.*

Grace, 291 Conn. 410, 419, 969 A.2d 157 (2009) (§ 52-212 (a) sets forth two requirements).

“The first prerequisite to the granting of a motion to open a judgment is a showing that a good [defense] existed. ‘The moving party on a motion to open must not only ‘allege,’ but also make a ‘showing’ sufficient to satisfy the two-pronged test of § 52-212. . . .’ (Citations omitted.) *Eastern Elevator Co. v. Scalzi*, 193 Conn. 128, 133-34, 474 A.2d 456 (1984). A bald assertion that one existed is inadequate.” *Moore v. Brancard*, 89 Conn. App. 129, 132, 872 A.2d 909 (2005). See *Pantlin & Chananie Dev. Corp. v. Hartford Cement & Bldg. Supply Co.*, 196 Conn. 233, 241, 492 A.2d 159 (1985), where, although the movant presented a motion and affidavit, a deficiency remained as to the first part of the test because the defendant did not offer any evidence showing that a good defense existed. “Consequently, the trial court could make no finding as to the validity of the defense.” *Id.*

Here, the defendants have only presented an affidavit containing bald assertions which do not offer evidence showing that a good defense existed. This is insufficient to make the requisite showing. The court has no basis on which to make a finding as to the validity of any defense.

Since defendant Santos has not met the first part of the two-pronged test, the court need not consider whether defendant Santos was prevented from defending the action by “mistake, accident or other reasonable cause.” See General Statutes § 52-212 (a).

As to defendant Mel Home Building, LLC, the defendants have not shown that the judgment was obtained by fraud, duress or mutual mistake or that newly discovered evidence exists to challenge the judgment. In the absence of such a showing, the court may not use its inherent authority, independent of statutory provisions, to open the judgment. See

Mercedes-Benz Financial v. 1188 Stratford Ave., LLC, supra, 312 A.3d 22.

CONCLUSION

For the foregoing reasons, the defendants' motion to open judgment of default is denied.

BY THE COURT

Robert B. Shapiro

ROBERT B. SHAPIRO
JUDGE TRIAL REFEREE

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Docket Number:

HHD CV23-6165978

Case Name: American v. Mel

Memorandum of Decision dated: 5/21/2024

File Sealed: Yes No X

Memo Sealed: Yes No X

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Superior Court Case Look-up
Civil/Family
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6165978-S

Prefix: HD3

AMERICAN ZURICH INSURANCE COMPANY v. MEL HOME BUILDING, LLC
Et Al

Case Type: C20

File Date: 02/27/2023

Return Date: 03/28/2023

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By Party Name
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By Attorney/Firm Juris Number
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Information Updated as of: 05/21/2024

Case Information

Short Calendar Look-up

By Court Location
By Attorney/Firm Juris Number
Motion to Seal or Close
Calendar Notices

Case Type: C20 - Contracts - Insurance Policy

Court Location: HARTFORD JD

List Type: HEARINGS IN DAMAGES (HD)

Trial List Claim: 10/11/2023

Last Action Date: 04/09/2024 (The "last action date" is the date the information was entered in the system)

Court Events Look-up

By Date
By Docket Number
By Attorney/Firm Juris Number

Disposition Information

Disposition Date: 01/26/2024

Disposition: JUDGMENT AFTER COMPLETED TRIAL TO THE COURT - HEARING IN DAMAGES

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Pending Foreclosure Sales ☞

Understanding

Display of Case Information

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Party & Appearance Information



Comments

| Party | No Fee Party | Category |
|--|-----------------------|-----------|
| P-01 AMERICAN ZURICH INSURANCE COMPANY Attorney: ☞ JOEL MARC JOLLES (306929) P.O. BOX 185418 HAMDEN, CT 06518 | File Date: 02/27/2023 | Plaintiff |
| D-01 MEL HOME BUILDING, LLC Attorney: ☞ DANIEL STEPHEN DIBARTOLOMEO (426151) 300 FEDERAL ROAD SUITE 108 BROOKFIELD, CT 06804 | File Date: 04/01/2024 | Defendant |
| D-02 ANDERSON J. SANTOS Attorney: ☞ DANIEL STEPHEN DIBARTOLOMEO (426151) 300 FEDERAL ROAD SUITE 108 BROOKFIELD, CT 06804 | File Date: 04/01/2024 | Defendant |

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