

IN THE SUPREME COURT OF THE STATE OF NEVADA

MAIN GATE AUTO WRECKING, LLC,
A NEVADA LIMITED LIABILITY
COMPANY, AND MAIN GATE LAND,
LLC, A NEVADA LIMITED LIABILITY
COMPANY,
Appellants,

vs.

FIRST NATIONAL BANK OF NEVADA
AND FEDERAL DEPOSIT INSURANCE
CORPORATION AS RECEIVER FOR
FIRST NATIONAL BANK OF NEVADA,
Respondents.

No. 54433

FILED

OCT 31 2012

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *R. Malone*
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from a district court post-judgment order granting an NRCP 60(c) motion and setting aside a default judgment. Eighth Judicial District Court, Clark County; Michelle Leavitt, Judge.

Between 2006 and 2008, appellants Main Gate Auto Wrecking, LLC, and Main Gate Land, LLC (collectively, Main Gate), obtained a loan and credit line with respondent First National Bank of Nevada (FNBN). On July 25, 2008, the Office of the Comptroller of the Currency closed FNBN and appointed respondent Federal Deposit Insurance Corporation (FDIC) as the receiver of FNBN. Main Gate later requested the release of additional funds from its credit line with FNBN. After FDIC refused to do so, Main Gate filed a complaint against FNBN alleging various claims, including breach of contract. Main Gate did not properly serve FDIC with a copy of this summons and complaint, and when FNBN failed to answer the complaint, Main Gate obtained a \$704,788 default judgment against FNBN, to be offset against the

remaining loan balances. When FDIC learned of the default judgment, it filed a motion to set aside the judgment pursuant to NRCP 60(c), which the district court granted based on insufficient service of process.

Main Gate now appeals, contending that the district court improperly granted FDIC's motion to set aside the default judgment for lack of standing because FDIC sold the loans at issue in the judgment and the judgment has been satisfied through an offset against these loans, and thus possessed no beneficial interest in the litigation's outcome. We disagree, and therefore affirm the district court's order setting aside the default judgment.

This court reviews a district court's decision granting or denying a motion to set aside a default judgment for an abuse of discretion. Gasset v. Snappy Car Rental, 111 Nev. 1416, 1419, 906 P.2d 258, 261 (1995), superseded by rule on other grounds as stated in Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 6 P.3d 982 (2000). However, this court reviews questions of law, such as the issue of standing, de novo. Roethlisberger v. McNulty, 127 Nev. ___, ___, 256 P.3d 955, 957 (2011).

Main Gate failed to properly serve FDIC with the summons and complaint when it knew that FDIC was acting as the receiver for FNBN. Main Gate conceded this point in front of the district court. Without proper service, the default judgment against FNBN is void. See Browning v. Dixon, 114 Nev. 213, 218, 954 P.2d 741, 744 (1998) (concluding that when a party obtains a default judgment through improper service of process, the default judgment is void and must be set aside). Thus, any terms of the default judgment awarding damages to Main Gate and offsetting those damages against the loans have no effect. See McNair v. Rivera, 110 Nev. 463, 472-73, 874 P.2d 1240, 1246-47 (1994)

(declaring default judgment “legally dead” because it was entered without proper service of process). Consequently, Main Gate’s arguments concerning events that occurred after the entry of the default judgment are irrelevant. Main Gate’s arguments regarding FDIC’s “standing” are also misplaced.

FDIC’s ability to bring a motion to vacate a default judgment centers upon whether FDIC constitutes a “party” under NRCP 60(c). Main Gate named FNBN as a defendant in a complaint, so FNBN would qualify as a “party” under NRCP 60(c)¹ and would have the ability to bring a motion to set aside the default judgment. The FDIC “steps into the shoes” and obtains all the rights of a failed bank when it becomes receiver. See O’Melveny & Myers v. FDIC, 512 U.S. 79, 86; 12 U.S.C. § 1821(d)(2)(A)(i). Therefore, when FDIC became receiver of FNBN, FDIC obtained all the rights FNBN had before the receivership.


Because Main Gate never properly served FDIC with its summons and complaint, we conclude that the district court did not abuse


¹ NRCP 60(c) provides:

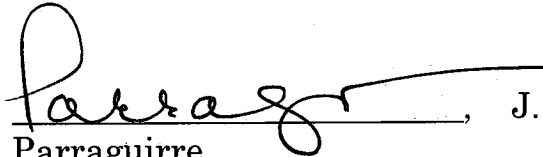
When a default judgment shall have been taken against any party who was not personally served with summons and complaint . . . the court, after notice to the adverse party, upon motion made within 6 months after the date of service of written notice of entry of such judgment, may vacate such judgment and allow the party or the party’s legal representative to answer to the merits of the original action.

its discretion by setting aside Main Gate's default judgment against FNBN. Accordingly, we

ORDER the judgment of the district court AFFIRMED.


_____, J.
Douglas


_____, J.
Gibbons


_____, J.
Parraguirre

cc: Hon. Michelle Leavitt, District Judge
Phillip Aurbach, Settlement Judge
Law Offices of Flangas and Leventhal
McDonald Carano Wilson LLP/Las Vegas
Eighth District Court Clerk