IN THE SUPREME COURT OF THE STATE OF NEVADA

TOPPO MANUFACTURING CORP., A NEVADA CORPORATION,

Appellant,

vs.

SNAILUM ALLOYS & STAINLESS, INC., A CALIFORNIA CORPORATION,

Respondent.

No. 35454

FILED

JAN 26 2001

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY
DEPUTY CLERK

ORDER OF AFFIRMANCE

This is an appeal from an order of the district court denying a motion to set aside a foreign judgment, and granting a motion for relief from judgment pursuant to NRCP 60(b).

Appellant Toppo argues that the district court abused its discretion by granting respondent Snailum's motion for relief from judgment under NRCP 60(b)(1) because of inadvertence and excusable neglect, and under 60(b)(2) because of Toppo's factual misrepresentations to the court. Further, Toppo contends that California did not have jurisdiction in this matter, and therefore, the California judgment obtained by Snailum should have been set aside by the district court. We disagree.

"Motions under Rule 60(b) are addressed to the sound discretion of the trial court." Heard v. Fisher's & Cobb Sales, 88 Nev. 566, 568, 502 P.2d 104, 105 (1972) (citations omitted). The trial court's determination "is not to be disturbed on appeal absent an abuse of discretion." Id. Thus, the trial court should be afforded substantial deference in determining its grant or denial of NRCP 60(b) relief. See Britz v. Consolidated Casinos Corp., 87 Nev. 441, 445, 488 P.2d 911, 914-15 (1971).

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As to NRCP 60(b)(1) motions involving mistake, inadvertence, surprise or excusable neglect, the trial court must consider five factors before granting relief. See Yochum v. Davis, 98 Nev. 484, 486, 653 P.2d 1215, 1216 (1982) (holding that the factors include: a prompt application to remove the judgment; no intent to delay the proceedings; evidence of a lack of knowledge concerning procedural requirements; good faith filing of 60(b) motion; and a meritorious defense to the claim of relief by the moving party).

Although the district court did not mention specific grounds in its decision granting relief under NRCP 60(b)(1), this court may affirm a correct result despite the unclear reasoning of a lower court. See Union Pacific R. Co. v. Harding, 114 Nev. 545, 549 n.2, 958 P.2d 87, 90 n.2 (1998). Under the factors established in Yochum, there is substantial evidence in the record to support the trial judge's determination. As a result, we conclude that the trial court did not abuse its discretion in granting relief under NRCP 60(b)(1).

Specifically, Snailum's NRCP 60(b) motion to vacate was filed within six months of the judgment as 60(b) requires, and was therefore considered "prompt." The record shows no intent by Snailum to delay the proceedings by filing the motion; rather, Snailum only submitted the motion when it realized its counsel failed to file an opposition in the matter.[1] We further conclude that Snailum's motion was brought in good faith without intent to defraud the court.

[1]The third element - evidence of a lack of knowledge concerning procedural requirements - is not relevant. Snailum was aware of its obligation to submit an opposition in Nevada, and believed that it had done so.

See Stoechlein v. Johnson Electric, Inc., 109 Nev. 268, 273, 849 P.2d 305, 309 (1993) (holding that "good faith" includes "an honest belief, the absence of malice, and the absence of design to defraud."). Lastly, the record shows that Snailum possessed a meritorious defense, evidenced by the affidavit of its president, who stated that Snailum always intended to enforce its California judgment in Nevada. See Hotel Last Frontier v. Frontier Prop., 79 Nev. 150, 155, 380 P.2d 293, 295 (1963) (holding that elements of a "meritorious defense" include affidavits of those with factual information that "tend to establish a defense to all or part of the claim for relief asserted.").

As to NRCP 60(b)(2), we also conclude that the district court did not abuse its discretion in granting relief from judgment. NRCP 60(b)(2) provides relief if the trial court determines that it was deceived by fraud, "misrepresentation or other misconduct of an adverse party which would have theretofore justified a court in sustaining a collateral attack upon the judgment." In this instance, the district court stated that "Toppo misrepresented certain facts to this Court which constitute grounds under NRCP 60(b) for vacating its Order and denying Toppo's motion to set aside the foreign judgment." Although the district court did not elaborate on what those misrepresentations were, we agree that misrepresentations are present in the record.

For example, we conclude that Toppo misrepresented that it was deprived of due process because its motion to set aside the California default judgment was not ruled on by an Article III judge. However, Toppo failed to note to the court that it did not dispute the commissioner's authority at that time or on its subsequent appeal.

Further, Toppo alleged to the trial court that it was never served with the original summons and complaint. However, the record demonstrates that Toppo was aware that Mr. Carucci's wife - Melinda Murphy, the President of Toppo - was the individual served although a different name was indicated on the service papers. Further, Carucci had written to Snailum's attorney in California acknowledging service only six days after Murphy was served.

Additionally, Toppo represented to the court that the default entered in California was taken surreptitiously and without notice. Toppo failed to indicate to the court, however, that five letters were exchanged between the two parties whereby Snailum threatened to take Toppo's default if Toppo did not file an answer in the suit.

Finally, Toppo alleged to the court that it had been deprived of notice because Snailum's California attorney, Brown, had purposefully and incorrectly addressed his mail to Toppo's California attorney, Thomas. Toppo's records, however, indicate that Thomas had also given the wrong zip code to the California Municipal and Superior courts. Thus, we deduce that any delays or missed mail was the fault of Toppo's own counsel, and not because of any intentional deception by Snailum's attorney.

As to Toppo's third contention - that the California judgment should have been set aside by the district court since Toppo had insufficient contacts with California to support personal jurisdiction - we also disagree.

A defendant who has made no appearance in the forum state is always free to collaterally attack a judgment rendered in his absence on the ground that the court lacked jurisdiction. See Baldwin v. Iowa State Traveling Men's Ass'n, 283 U.S. 522, 525 (1931). However, regardless of

whether the foreign court lacked jurisdiction to pronounce a judgment, a party will be barred from collaterally attacking that judgment if that party appeared to contest jurisdiction in the foreign court and was defeated. See Durfee v. Duke, 375 U.S. 106, 111-12 (1963). In this instance, Toppo unsuccessfully raised the issue of jurisdiction in California. As a result, we hold that Toppo was collaterally estopped from resurrecting the issue in Nevada.

Because there was sufficient evidence in the record to support the granting of relief under NRCP 60(b)(1) and (2), and because appellant was collaterally estopped from raising the jurisdictional issue in Nevada, we conclude that there was no abuse of discretion by the district court. Accordingly, we

ORDER the decision of the district court AFFIRMED.

Shearing, J.

Agosti, J.

Leavitt, J.

cc: Hon. Steven R. Kosach, District Judge
Carucci, Bowers & Thomas
Law office of Mark Wray
Washoe County Clerk