IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE STYLE OF THE CASE:

GROUND FREIGHT EXPEDITORS, LLC,

Respondent,

  v.

JUDY C. BINDER AND GERARD F. BINDER,

Appellants.

DOCKET NUMBER WD75102
MISSOURI COURT OF APPEALS
WESTERN DISTRICT

Date: August 27, 2013

Appeal from:
Clay County Circuit Court
The Honorable Karen L. Krauser, Judge

Appellate Judges:
Division One: Mark D. Pfeiffer, P.J., and Victor C. Howard and Alok Ahuja, JJ.

Attorneys:
John D. Stasny, Bryan, TX, for Appellants.
Anthony S. Paris, Kansas City, MO, for Respondent.

GROUND FREIGHT EXPEDITORS, LLC,

                                                    Respondent,

   v.

JUDY C. BINDER AND GERARD F. BINDER,

                                                    Appellants.

WD75102   Clay County

Ground Freight Expeditors, LLC sued Astorclub Corporation and two of its principals, Gerard and Judy Binder, in the Circuit Court of Clay County, alleging that they had failed to pay for shipping services Ground Freight provided to Astorclub. The Binders, who are husband and wife, are residents of New York, which is where Astorclub is headquartered. Although Astorclub and the Binders were served with process, they did not answer or otherwise respond to Ground Freight's petition, and the associate circuit division of the circuit court entered a default judgment against them.

More than two years later, the Binders filed a motion to set aside the default judgment, arguing that it was void because the circuit court lacked personal jurisdiction over them. The Binders argued that they had not consented to be sued in Missouri, and that they did not have sufficient contacts with Missouri to support the exercise of jurisdiction over them. The associate circuit division denied the motion and the Binders appeal.

AFFIRMED.

Division One holds:

The Binders' arguments on appeal proceed on the assumption that it was *Ground Freight's* burden to prove that the circuit court had personal jurisdiction over them. While this may have been true if the Binders had filed a motion to dismiss before the default judgment was entered, a different rule applies when the defendant seeks to have a judgment set aside on the ground that it is void, years after the judgment was entered.

Missouri courts have held that the scope of "void" judgment must be narrowly restricted to protect the strong public policy interest in the finality of judgments. Based on the strong public policy favoring the finality of judgments entered by Missouri's courts, we conclude that the burden of proof must be placed on the Binders to establish that the circuit court lacked

personal jurisdiction. Placing the burden on the moving party is particularly warranted in this context, where a motion to set aside a judgment as void may be filed years after the judgment's entry, and when the evidence concerning the existence of personal jurisdiction may be largely, if not exclusively, in the defendant's possession.

The Binders offer no argument in their appellate brief that *they* satisfied *their burden* to show a lack of jurisdiction: they cite no evidence to support their claims that they have no business or other contacts with Missouri, or to establish that piercing the corporate veil between themselves and Astorclub was unjustified. Instead, the Binders' appellate brief argues that they are entitled to have the default judgment set aside because Ground Freight failed to allege, or produce evidence, establishing personal jurisdiction over them. This argument is based on the mistaken belief that it was Ground Freight's burden to establish personal jurisdiction. The Binders' claim that "[t]here is no allegation" concerning their contacts with Missouri in Ground Freight's petition is equally unavailing, since the fact that a plaintiff's pleading is deficient, and fails to state a claim for relief, does not render the resulting judgment "void."

Before: Division One: Mark D. Pfeiffer, P.J., and Victor C. Howard and Alok Ahuja, JJ.

Opinion by: Alok Ahuja, Judge **August 27, 2013**

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