

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

KANSAS CITY LIVE LLC

APPELLANT,

**v.
VIRGINIA BUKOVAC**

RESPONDENT.

DOCKET NUMBER WD78882

DATE: May 3, 2016

Appeal From:

Jackson County Circuit Court
The Honorable David M. Byrn, Judge

Appellate Judges:

Division Three: Gary D. Witt, Presiding Judge, James E. Welsh, Judge and Anthony Rex Gabbert, Judge

Attorneys:

Michelle R. Stewart and Jennifer R. Johnson, Overland Park, KS, for appellant.

John E. Turner and Christopher P. Sweeny, Kansas City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

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WESTERN DISTRICT**

KANSAS CITY LIVE LLC,

APPELLANT,

v.

VIRGINIA BUKOVAC,

RESPONDENT.

No. WD78882

Jackson County

Before Division Three: Gary D. Witt, Presiding Judge, James E. Welsh, Judge and Anthony Rex Gabbert, Judge

Appellant Kansas City Live LLC ("KC Live") appeals the denial by the Circuit Court of Jackson County of its Motion to Set Aside Interlocutory Order of Default ("Motion to Set Aside"). The Order of Default was entered against KC Live in a lawsuit filed by the Respondent/Plaintiff Virginia Bukovac ("Bukovac") against defendants KC Live and the City of Kansas City, Missouri, in which Bukovac alleged that she was injured when she tripped and fell on an uneven sidewalk in downtown Kansas City due to the defendants' combined negligence. KC Live failed to respond to Bukovac's amended petition, and Bukovac was granted an interlocutory judgment of default against KC Live. KC Live sought to have that interlocutory order of default set aside. The trial court, in denying the Motion to Set Aside, found that KC Live had failed to meet the requirements of Rule 74.05(d) in that KC Live (1) failed to prove it had a meritorious defense and (2) failed to show good cause to set aside the default. KC Live now appeals both of these findings.

WE AFFIRM AND REMAND

Division Three holds:

The trial court did not err in finding that KC Live failed to prove it had a meritorious defense to Bukovac's claims. KC Live failed to meet the requirement of Rule 74.05(d) and case law, which requires that the allegations in a motion to set aside are not self proving and must be verified or otherwise supported by affidavit or sworn testimony. KC Live presented no testimony or evidence, sworn or otherwise, to support its claimed meritorious defenses. Even if KC Live could rely solely on Bukovac's pleadings in support of its meritorious defenses, reliance on Bukovac's pleadings alone does not provide KC Live with a meritorious defense. Because we have found KC Live failed to meet its burden to show it has a meritorious defense, it is unnecessary for the Court to decide whether KC Live failed to show good cause why the Motion to Set Aside should have been granted.

We affirm the trial court's denial of KC Live's Motion to Set Aside and remand this matter for further proceedings regarding damages and the additional claims against the City of Kansas City.

Opinion by Gary D. Witt, Judge

May 3, 2016

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