

February 9, 2007

**COURT OF APPEALS AFFIRMS METHOD TO VACATE DEFAULT JUDGMENTS**

The Minnesota Rules of Civil Procedure, at Rule 60.02, permits a party to make a motion to vacate a final judgment on motion “upon such terms as are just.” In American Business Forms, Inc., v. Rass Trading Corp., et. al., (File A06-249, December 5, 2006), a recent unpublished decision, the Minnesota Court of Appeals affirmed a district court’s application of the four-part test to vacate a default judgment entered against a party. Traditionally, a defendant can defeat a Default Judgment by establishing four elements: (1) that the party has a reasonable defense on the merits; (2) that the party has a reasonable excuse for its failure or neglect to act; (3) that the party acted with due diligence after notice of entry of default judgment; and (4) the request to vacate the default will not substantially prejudice the opposing party.

In American Business, Rass Trading Corp. (“Rass”) was located of Massachusetts. In July 2005, American Business Forms (“ABF”) and American Minority Business Forms (“AMBF”) served Rass with two separate Minnesota law suits in Massachusetts. Appellants forwarded the Complaints to a Massachusetts attorney who made the mistake of assuming that the ABF complaint was a duplicate of the AMBF complaint. As a result, the Massachusetts attorney was under the impression that the AMBF suit was the only suit facing Rass, and sought an extension to answer only that complaint.

In August 2005, ABF and AMBF moved for Default Judgment against the Appellants on both lawsuits. The Massachusetts attorney obtained local counsel to defend the case, but only told the Minnesota attorney about the AMBF suit. Local counsel found out about the ABF suit four days before the scheduled default judgment hearings. At the hearing, the court entered Default Judgment for ABF in the amount of \$379,265.20, based on the fact that “[d]efendants have failed to appear, answer or defend the action in any way.”

In October 2005, Rass moved to vacate the default judgment. The District Court vacated the default judgment, finding Rass had: a reasonable defense on the merits, a reasonable excuse for not answering the complaint and acted with appropriate diligence after the entry of the default judgment. However, the District Court required Rass post a bond for \$402,000, the amount of the judgment plus half of the attorneys fees requested, to ensure that ABF did not suffer substantial prejudice in the delay of the judgment. Rass appealed, arguing that the District Court abused its discretion by requiring it to post the bond to vacate the default judgment.

Citing Finden v. Klaas, 128 N.W.2d 748, 750 (1964) and Hinz v. Northland Milk & Ice Cream Co., 53 N.W.2d 454, 456 (1952), the Minnesota Court of Appeals confirmed that to vacate a default judgment, the moving party must show:

- (1) a reasonable defense on the merits;
- (2) a reasonable excuse for failure or neglect to act;
- (3) that they acted with due diligence after notice of entry of default judgment; and
- (4) that no substantial prejudice will result to the opposing party.

The Court of Appeals affirmed the District Court's determination that the record supports the conclusion that Rass satisfied the first three elements of the Finden/Hinz test to vacate Default Judgments. However, the Court of Appeals remanded the case to the District Court to determine a bond amount that is consistent with the level of prejudice found, to ensure that the fourth element was satisfied.

American Business Forms is a valuable case because it reiterates the necessary elements to vacate a default judgment, and it shows that it is relatively difficult to obtain a Default Judgment in Minnesota, if a party acts in a reasonable and diligent matter to respond to the Summons and Complaint. While this case confirms the bright-line test for vacating default judgments, the determination of whether all necessary elements are met is left to the Court's discretion. Predicting a Court's conclusion in this regard is virtually impossible. The best practice is to make sure all employees, clients, and insureds understand that if a Summons and Complaint are served, it is imperative legal counsel is notified immediately so there is no issue about missing deadlines.

On the other hand, if a case does slip through the cracks, American Business Forms confirms it is just as important to act quickly and competently, once notice is received of a Default Judgment, in order to put the client in the best possible light, despite the failure to Answer the Complaint. Hopefully, such diligent action will be seen as reasonable in the eye of the Court, such that the Default Judgment can be vacated.

If you have any questions about Default Judgments, the need to have them vacated, this decision, or any other Minnesota litigation issues, please contact any of the litigation attorneys at Johnson & Condon at (952) 831-6544, or through our website, [www.johnson-condon.com](http://www.johnson-condon.com). A copy of this letter is also available on the News and Resources page at <http://www.johnson-condon.com/news-resources.htm>.

Sincerely,

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