2026 IL App (1st) 250704-U

No. 1-25-0704

Second Division
September 15, 2026

NOTICE: This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

CB CHICAGO PARTNERS, LTD.,	)	Appeal from the Circuit Court of Cook County.
Plaintiff-Appellee,	)	No. 2023 L 009111
v.	)	The Honorable
JOHN WILLIAMS and PATRICE WILLIAMS,	)	James E. Hanlon, Jr.,
Defendants-Appellants.	)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice D.B. Walker and Justice Van Tine concurred in the judgment.

ORDER

¶ 1 *Held:* Where defendants repeatedly failed to appear in court or otherwise comply with their court obligations, and where they had admitted facts sufficient to support an entry of judgment on the merits and did not file any affirmative defenses to plaintiff's complaint, the circuit court's denial of their third motion to vacate default judgment did not constitute an abuse of discretion and is therefore affirmed.

¶ 2 Defendants John and Patrice Williams operated a daycare facility in Markham, Illinois, and rented commercial property from plaintiff CB Chicago Partners, Ltd., for that purpose. During the COVID-19 pandemic, defendants failed to make payments owed under the lease and plaintiff filed a lawsuit against them in response. Defendants failed to appear, and default

judgment was entered against them, which was subsequently vacated after they retained counsel. Defendants, however, failed to timely file an answer, and default judgment was again entered against them, which was also ultimately vacated. Defendants then participated in the litigation until the withdrawal of their counsel during the discovery process. After the withdrawal of their counsel, defendants failed to retain substitute counsel or to appear *pro se*, and a third default judgment was entered against them. Defendants filed a *pro se* motion to vacate the default, which the circuit court denied. Defendants filed a *pro se* appeal and, for the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On September 11, 2023, plaintiff filed a two-count complaint against defendants concerning a commercial lease for a property in Markham. The complaint alleged that plaintiff had issued a notice of default for failure to pay rent, defendants had not made any payment of rent to remedy the default, and that defendants owed a total of $150,003.47, not including attorney fees and late fees.

¶ 5 Count I of the complaint was against defendant John Williams and alleged that plaintiff had performed all of its obligations under the lease and that he had breached the lease by failing to pay rent when due. Count II of the complaint was against defendant Patrice Williams and was titled "Breach of Guaranty." Like count I, count II alleged that plaintiff had performed all of its obligations under the lease and that she had breached the lease by failing to pay rent when due.

¶ 6 Attached to the complaint was a copy of the commercial lease at issue, which identified the tenant as "JOHN WILLIAMS, an individual, and PATRICE WILLIAMS, an individual, jointly and severally, d/b/a MARKHAM CHILD DEVELOPMENT CENTER." The

commencement date of the lease was September 1, 2018, and the lease term was 66 months; the rent commencement date was March 1, 2019, and defendants were required to make monthly rent payments.

¶ 7 As relevant to the instant appeal, article X of the lease concerned default, and provided that "[t]he occurrence of one or more of the following events shall constitute an Event of Default by Tenant under this Lease: (a) Tenant fails to pay any Rent when due and such failure is not remedied within five (5) days after written notice to Tenant ***." Upon the occurrence of an event of default, the lease permitted plaintiff to terminate the lease and take possession of the premises. The lease further provided:

> "[a]ny notice required or permitted under this Lease shall be in writing and, except as specifically provided otherwise herein, shall be delivered by (a) a national overnight courier service that confirms delivery, (b) United States mail, registered or certified, return receipt requested, postage prepaid, or (c) personal delivery, in each case addressed to the party to whom such notice is to be given at the address listed in Section 1.1 for the giving of notices, or at the most recent address specified by written notice given to the other party in the same manner provided in this section. Notice shall be effective upon receipt or refusal to receive."

¶ 8 Finally, the lease contained a force majeure clause, which provided that performance of an act required under the lease would be excused if performance was delayed or hindered by reason of "strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Lease." The provision, however, provided that it "is inapplicable to the payment

of Rent and Additional Rent unless due to an act arising after Tenant's mailing and affecting the physical delivery of the payment."

¶ 9 On November 29, 2023, plaintiff filed a motion for an order of default and the entry of default judgment against defendants, claiming that they had been served with the summons and complaint but had not filed an answer or other pleading. On December 28, 2023, the circuit court found defendants in default and entered default judgment against defendants and in favor of plaintiff in the amount of $150,003.47, plus postjudgment interest and the costs of collection.

¶ 10 On January 29, 2024, defendants filed an appearance through counsel, as well as a motion to vacate the default judgment. Defendants claimed that they resided in Mississippi, did not understand how to file an appearance electronically, and that "[i]t took the defendants time to locate Counsel in Illinois." Defendants further claimed that they had meritorious defenses to the complaint, including that defendants were not indebted to plaintiff and that plaintiff did not comply with all of its obligations under the lease. Finally, defendants claimed that they had not received a copy of the motion for default. As such, they requested that the default judgment be vacated.

¶ 11 On April 9, 2024, the circuit court entered an agreed order vacating the default judgment and granting defendants 28 days to answer or otherwise plead. Defendants did not timely file any pleadings and, accordingly, on June 5, 2024, the circuit court entered an order reinstating the December 28, 2023, order of default and default judgment.

¶ 12 On July 1, 2024, defendants filed a motion to vacate the default judgment, claiming that counsel had a number of personal and professional issues which had prevented her from effectively communicating with her clients to the extent necessary to draft the responsive

pleading and had failed to file a motion to extend the time for pleading. Defendants requested that the default judgment be vacated and that they be permitted to file their answer *instanter*.

¶ 13 The circuit court granted defendants' motion on July 16, 2024, and permitted them to file their answer *instanter*. In their answer, defendants denied that they owed the amounts sought by plaintiff, denied that plaintiff issued a notice of default for failure to pay rent, and denied that they had failed to make payments under the lease. They did not raise any affirmative defenses in their pleading.

¶ 14 The parties proceeded to engage in discovery. As relevant to the instant appeal, the record indicates that on September 27, 2024, plaintiff propounded interrogatories, requests to admit, and requests for the production of documents on defendants, and it appears that defendants similarly propounded discovery on plaintiff.[1] On November 15, 2024, however, defendants' counsel filed a motion to withdraw. The circuit court entered and continued the motion on November 26, 2024, ordering defendants to appear via Zoom on the next court date and ordering that "Defendants' counsel is expected to assist Defendants with completing their discovery obligations, including responding to the Plaintiff's interrogatories, requests for production of documents, and requests for admission."[2] Ultimately, the circuit court granted counsel's request to withdraw on January 14, 2025, and gave defendants 21 days to retain new counsel or to file supplemental appearances; defendants were not present at the January 14 court date. The order set the matter for status of appearance of substitute counsel and discovery on February 19, 2025, "without further notice."

[1] The record on appeal contains only an e-mail communication between plaintiff's attorney and defendants' attorney to which the documents appear to be attached; the documents themselves are not contained in the record on appeal. It is, however, undisputed that the parties exchanged discovery requests.

[2] It is unclear whether defendants were present at this court date.

¶ 15 On February 7, 2025, plaintiff filed a motion for an order of default and for default judgment, claiming that defendants had failed to timely file supplemental appearances and had failed to respond to plaintiff's discovery requests. Plaintiff requested a default judgment in the amount of $219,615.25 plus postjudgment interest and the costs of collection. The matter was set for hearing at the same time as the previously-scheduled status hearing. At the February 19, 2025, hearing, the circuit court granted plaintiff's motion, entering judgment in favor of plaintiff and against defendants.

¶ 16 On February 21, 2025, defendants filed a *pro se* motion to vacate the default judgment based on a lack of proper service, claiming that they had not received notice of plaintiff's motion for default until February 20, 2025, the day after the hearing on the motion. On the same day, they also filed a *pro se* "motion to dismiss or vacate judgment based on force majeure," claiming that defendants' obligations under the lease were excused due to the governmental restrictions imposed during the COVID-19 pandemic.

¶ 17 On April 15, 2025, the circuit court entered an order denying defendants' motion to vacate the default judgment. In its order, the circuit court observed that defendants had filed their motion to vacate only days after the entry of the default judgment and, "[o]rdinarily, that might carry the day, but not today." The circuit court found that defendants "have a history of ignoring their obligations under the Code of Civil Procedure and the Illinois Supreme Court Rules." The circuit court further found that "creating a fourth opportunity for Defendants to defend this action would be a useless act," as defendants had failed to respond to plaintiff's requests to admit, meaning that they had already admitted sufficient facts to support entry of a judgment on the merits. The circuit court observed that, "[g]iven the passage of time without any action on their part, any motion Defendants might file to enlarge the time to respond to the

Request to Admit would be quickly denied. And their proposed force majeure defense fails as a matter of law." Consequently, the circuit court found that "[t]here is no good reason to give Defendants a fourth bite at the apple" and denied their motion to vacate the default, as well as denying their motion to dismiss based on force majeure as moot.

¶ 18 Defendants timely filed a notice of appeal, and this *pro se* appeal follows.

¶ 19 ANALYSIS

¶ 20 On appeal, defendants contend that the circuit court erred in denying their motion to vacate the default. While they also raise several issues concerning the merits of the complaint, the issue before us on appeal is whether the denial of the motion to vacate was proper, and accordingly, we limit our analysis to that issue.

¶ 21 Section 2-1301(e) of the Code of Civil Procedure (Code) (735 ILCS 5/2-1301(e) (West 2024)) permits the circuit court, in its discretion, to set aside "any final order or judgment upon any terms and conditions that shall be reasonable" in response to a motion filed within 30 days after entry of the final order or judgment. The decision whether to grant or deny a motion under section 2-1301(e) is within the sound discretion of the circuit court, and we will not reverse its decision absent an abuse of that discretion. *SP Consulting, Inc. v. Exceleo Business Consulting, Inc.*, 2024 IL App (1st) 230995, ¶ 27. An abuse of discretion occurs "only where no reasonable person would take the position adopted by the trial court; that is, where the trial court acted arbitrarily or ignored recognized principles of law." *Jackson v. Bailey*, 384 Ill. App. 3d 546, 548-49 (2008).

¶ 22 As the moving party, defendants in this case have the burden of establishing sufficient grounds for vacating the judgment. *Mann v. Upjohn Co.*, 324 Ill. App. 3d 367, 377 (2001). In ruling on a motion to vacate, the " 'primary concern *** is whether substantial justice is being

done between the litigants and whether it is reasonable under the circumstances to proceed to trial on the merits.' " *Id.* (quoting *Marren Builders, Inc. v. Lampert*, 307 Ill. App. 3d 937, 941 (1999)). "Whether substantial justice is being achieved by vacating a judgment or order is not subject to precise definition, but relevant considerations include diligence or lack thereof, the existence of a meritorious defense, the severity of the penalty resulting from the order or judgment, and the relative hardships on the parties from granting or denying vacatur." *Jackson*, 384 Ill. App. 3d at 549. The circuit court should consider all events leading up to the judgment, and what is "just and proper" must be determined by the facts of each case. *SP Consulting*, 2024 IL App (1st) 230995, ¶ 27. "The guiding principle is to prevent dismissal when it would be unfair, unjust, and inequitable." *Mann*, 324 Ill. App. 3d at 377.

¶ 23 In this case, the circuit court found that vacating the default judgment would not achieve substantial justice, given defendants' "history of ignoring their obligations under the Code of Civil Procedure and the Illinois Supreme Court Rules." In addition, the circuit court found that vacating the judgment would be a "useless act," given that they had similarly failed to respond to plaintiff's requests to admit, thereby admitting sufficient facts to support entry of a judgment on the merits, and given that their force majeure defense failed as a matter of law. The circuit court accordingly found that "[t]here is no good reason to give Defendants a fourth bite of the apple" and denied their motion. We cannot find that this decision constituted an abuse of discretion.

¶ 24 As the circuit court observed, the instant order represented the third time that default judgment had been entered against defendants based on their failure to participate in the litigation. Even leaving aside the first two default judgments, the final default judgment also occurred in the context of defendants' failure to respond to plaintiff's discovery requests and

their failure to appear at a court date at which they were specifically ordered to appear.[3] To the extent that defendants argued that the default should be vacated for lack of proper service, we do not find this argument persuasive. Defendants acknowledged that they had been served, but claimed that the notice arrived after the date of the hearing. The hearing on the motion to vacate, however, was scheduled for the same date and time as a previously-scheduled status hearing, meaning that defendants should have been prepared to be present in court even if postal issues prevented the notice of the motion for default from arriving in time.

¶ 25 In addition, defendants' nonresponsiveness appears to have foreclosed them from challenging the merits of plaintiff's complaint. While it does not appear in the record on appeal, it is undisputed that defendants failed to respond to plaintiff's requests to admit and the circuit court found that, as a result, "[t]he Defendants have already admitted sufficient facts to support entry of a judgment on the merits." As the requests to admit are not included in the record on appeal, we must presume that the circuit court's finding on this matter was correct. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984). Given that defendants did not file any affirmative defenses at the time they filed their answer, admission of the facts contained in the requests to admit appears dispositive of the merits of the complaint, meaning that vacating the default would not have any practical effect. As such, we cannot find that substantial justice requires the vacatur of the default judgment and the circuit court's decision to deny defendants' motion does not constitute an abuse of discretion.

[3] We observe that there is some indication in the record that defendants failed to appear on January 13, 2025, due to counsel's failure to timely send them the login information for the Zoom hearing. The hearing, however, appears to have been continued to the next day, at which point counsel was permitted to withdraw. There is no dispute that defendants were not present at the January 14, 2025, hearing.

¶ 26 CONCLUSION

¶ 27 Where defendants repeatedly failed to appear in court or otherwise comply with their court obligations, and where they had admitted facts sufficient to support an entry of judgment on the merits and did not file any affirmative defenses to plaintiff's complaint, the circuit court's denial of their third motion to vacate default judgment did not constitute an abuse of discretion.

¶ 28 Affirmed.