

IN THE CIRCUIT COURT OF FAYETTE COUNTY, WEST VIRGINIA

NEW TRINITY COAL, INC.,

Plaintiff,

v.

**Civil Action No.: 21-C-12
Judge Paul M. Blake, Jr.**

RESOURCES LIMITED, LLC.,

Defendant.

**ORDER DENYING DEFENDANT'S
MOTION TO SET ASIDE DEFAULT JUDGMENT**

**FAYETTE COUNTY
CLERK
2021 APR - 1 A 10:43**

On March 30, 2021, the parties, by their respective counsel, appeared for a hearing on Defendant's Motion to Set Aside Default Judgment. The Court had opportunity to read the written submissions of counsel and heard oral argument from counsel regarding the Motion and the Plaintiffs Response thereto. After reviewing and considering all pertinent facts, the Court FINDS and CONCLUDES as follows:

FINDINGS OF FACT

1. Plaintiff instituted the above-styled civil action on or about February 12, 2021.
2. Thereafter, the Complaint was served on Defendant via the West Virginia Secretary of State, the same being perfected on February 22, 2021.
3. Prior to being served via the West Virginia Secretary of State, Defendant was served with a copy of the summons and complaint via certified mail, the same being delivered and signed for by Defendant's president, David Huffman, on February 17, 2021.
4. Additionally, a copy of the date stamped Complaint was provided to Defendant's President, David Huffman, via electronic mail on February 12, 2021.

5. On March 24, 2021, this Court granted Plaintiffs previously filed Motion for Default Judgment, as Defendant had failed to answer or other respond to the Complaint filed against it within the prescribed timeframe after being properly served via certified mail.

6. Two days later, on March 26, 2021, Plaintiff's counsel received a telephone call from Defendant's counsel herein advising that he had filed an answer to the Complaint that same day.

7. Defendant's counsel took the position that his answer was timely as he had 30 days to answer following service via the West Virginia Secretary of State. Plaintiff's counsel did not dispute this fact but contended that the Defendant's timeframe to respond to the Complaint began to run on February 17, 2021, when he signed for certified mail service of process.

8. In its Motion to Set Aside Default Judgment, Defendant contended, for the first time, that Mr. David Huffman, President of Resources Limited, LLC, had never signed for certified mail that has been sent to him in these proceedings, both before and after suit was filed.

9. However, the Court FINDS that this contention is meritless, as he is the President of the company, so regardless of whether or not he signs for the certified mail, his name is being signed to the green card thus holding him fully responsible on behalf of the company.

CONCLUSIONS OF LAW

1. The Court CONCLUDES Rule 60(b) of The West Virginia Rules of Civil Procedure governs the Motion to Set Aside Default Judgment.

2. The Court further CONCLUDES that there are five factors the Court can consider in setting aside a default judgment. These factors are 1) the degree of prejudice suffered by the Plaintiff from the delay in answering; (2) the presence of material issues of fact and meritorious defenses; (3) the significance of the interests at stake; (4) the degree of intransigence on the part of the defaulting party; and (5) the existence of excusable neglect. *Harwood Group v. Larocco*, 631 S.E.2d 614 (W Va. 2006)

3. After reading the written submissions and listening to oral argument of counsel, the Court CONCLUDES the *Harwood* factor should be considered. In so considering, the Court CONCLUDES that Plaintiff has suffered an extreme prejudice by Defendant's actions and/or inactions in this matter. In support of this conclusion, the Court notes that Plaintiff has a secured interest in the equipment owned (and still operated) by Defendant. Every day that Defendant is permitted to continue operating this equipment, and profiting from this work, Plaintiff is prejudiced. Every day that this equipment is used, the value of said equipment diminishes. Plaintiff has been owed substantial sums of money for almost two years now, and Defendant continues to operate its business to Plaintiff's detriment.

4. The Court thereby CONCLUDES that Plaintiff has a secured interest in the coal mining equipment owned by Defendant Resources Limited, LLC, and hereby ORDERS the previously entered default judgment remain in place, and further ORDERS that Defendant be forced to immediately idle its equipment, so Plaintiff is not additionally financially damaged. Furthermore, the Court ORDERS the Sheriff to seize the Defendant's mining equipment in which Plaintiff has a secured financial interest.

The Clerk is hereby directed to send a copy of this ORDER to counsel and the parties of record. The objections and exceptions of the Defendant are noted.

ENTERED THIS 31st day of March, 2021.

Attested Copies to:

KL / _____

TL / _____

_____/ _____

_____/ _____

Date: 4-1-2021

Initials: SM


Judge Paul M. Blake, Jr.

Prepared By:



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