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DISTRICT III

February 2, 2021

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You are hereby notified that the Court has entered the following opinion and order:

2019AP1544 Vibrant Impressions, Inc. v. Unipro Graphics, Inc.
(L. C. No. 2019CV233)

Before Stark, P.J., Hruz and Seidl, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Unipro Graphics, Inc., appeals from the denial of its motion seeking reconsideration of the circuit court's prior denial of its motion to vacate a default judgment. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18). The appeal is dismissed.

This matter stems from a contract dispute. Unipro is a family-owned corporation with its principal place of business in Cook County, Illinois. Vibrant Impressions, Inc., contracted to provide Unipro with goods and services on an open account. Vibrant alleged that Unipro was

delinquent in payment on several invoices, and when the parties unsuccessfully attempted to negotiate a resolution concerning the outstanding debt, Vibrant filed a lawsuit in Brown County, Wisconsin, to collect unpaid invoices.

An affidavit of service established that Vibrant served its summons and complaint upon Unipro on February 20, 2019. Shortly after service, Unipro contacted its corporate counsel, who was not licensed to practice in Wisconsin. Unipro's corporate counsel therefore contacted a litigation firm in Chicago, and on March 12 Unipro formally retained that law firm. On March 14, Unipro's attorney contacted counsel for Vibrant to discuss the matter and also to advise that an appearance and answer to the complaint would be forthcoming. During that conversation, counsel for Vibrant advised that he had filed a motion for default judgment.

On March 15, 2019, Unipro's counsel filed a notice of appearance together with a motion to vacate the expected default judgment. On that same date, the circuit court entered a written default judgment in the amount of \$19,176.86 plus costs and disbursements. Upon receipt of a copy of the default judgment, Unipro requested a hearing on the motion to vacate, which was held on April 5. Minutes from the April 5 hearing reveal that the court denied the motion to vacate and took no action on Unipro's request to file a counterclaim. The court did not enter a written order from the April 5 oral ruling on the motion to vacate.¹

On April 16, 2019, Unipro filed a motion for reconsideration of the denial of the motion to vacate the default judgment. Accompanying the reconsideration motion were four affidavits from the owners of Unipro and its attorneys. The owners averred that upon being served with

¹ Unipro failed to request a transcript of the April 5, 2019 hearing.

the Wisconsin summons and complaint, they immediately sought counsel to represent Unipro. While acknowledging that Unipro owed \$12,000 to \$15,000 to Vibrant, Unipro disputed it owed the entire amount of the judgment and alleged that Vibrant was in possession of intellectual property belonging to Unipro, which was purportedly relevant to a potential counterclaim. An affidavit from counsel averred that upon his review of the complaint and file materials from Unipro, he contacted counsel for Vibrant to advise his office would be filing an appearance and answer, and at that point he was told that the motion for default judgment had been filed.

The circuit court entered a briefing schedule on the reconsideration motion, and after briefing, the court denied the reconsideration motion without a hearing. In its written decision and order, the court found Unipro's default was not due to excusable neglect. The court reasoned:

The gist of the Defendant's Motion for Reconsideration can be found within a parenthesis within paragraph 6 which states "(never anticipating that there would be an objection or that professional decorum would not control.)" The Court is aware that attorneys often extend professional courtesy to opposing counsel by orally granting opposing counsel additional time to file an answer. The Wisconsin State Legislature chose the length of time to respond at 20 days.

Unipro subsequently filed a notice of appeal. By order dated October 15, 2019, we identified a reason to question our appellate jurisdiction. We noted that the record does not include a written order denying the motion to vacate the default judgment, and that a judgment or order must be reduced to writing and filed with the clerk of court before an appeal may be taken. *Ramsthal Advert. Agency v. Energy Miser, Inc.*, 90 Wis. 2d 74, 75, 279 N.W.2d 491 (Ct. App. 1979). We therefore concluded that we lacked jurisdiction to review the circuit court's April 5, 2019 oral ruling.

We further noted that a written order denying reconsideration was entered on July 10, 2019, and a timely notice of appeal was filed from that order. However, an appeal cannot be taken from an order denying a motion for reconsideration that presents the same issues as those determined in the order sought to be reconsidered. *See Silverton Enters., Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988). It was unclear from the record before us whether the motion for reconsideration presented issues that could have been raised in an appeal from the denial of the motion to vacate, had a written order been entered and an appeal taken from that decision. Accordingly, we ordered the parties to address as a threshold issue in their appellate briefs whether we had jurisdiction to address the reconsideration motion.²

Unipro argues that we have jurisdiction to review the denial of the reconsideration motion for several reasons. First, it contends the original motion to vacate was “only intended to address what was merely a technical default at that time (and to preempt the entry of any actual default pursuant to the Plaintiff’s Motion).” Unipro further argues that it raised additional issues regarding Unipro’s “meritorious defense(s) and its counterclaim for anticipatory breach and Vibrant’s improper retention and use of Unipro’s intellectual property.” According to Unipro, the reconsideration motion “provided the circuit court with a complete set of facts and circumstances surrounding Unipro’s actions.”

There is no “technical default” under Wisconsin law. Default judgment was entered, and Unipro was obliged to file all supporting documents with its original motion to vacate.

² Vibrant failed to file a response brief in this court. We could therefore summarily reverse. However, we choose to address the jurisdictional issue. Because we conclude this court lacks jurisdiction, we shall not address the merits of the reconsideration motion.

Affidavits added later upon the filing of its reconsideration motion could have—and should have—been filed in support of the original motion in an attempt to show excusable neglect. Adding a “complete set of facts and circumstances” does not constitute a proper reconsideration motion, as details regarding timeliness, meritorious defenses, and counterclaims were not new issues—rather, those facts and circumstances were known to Unipro at the time of its original motion to vacate. Indeed, the minutes from the April 5, 2019 hearing confirm that Unipro specifically requested to file a counterclaim.³ At no point in its brief to this court does Unipro raise any “new issue” regarding the motion for reconsideration as compared to issues that were raised or should have been raised in the motion to vacate.

Unipro also contends that it “could not appeal the April 5th, 2019 ruling,” and that its reconsideration motion was filed in good faith. However, nothing prevented an appeal from the denial of the original motion to vacate other than the need to reduce the order to writing and have it filed with the clerk of court. A party may not extend the time for appeal of an adverse decision by failing to reduce an order to writing, moving for its reconsideration, and then appealing the order denying the reconsideration motion.

We conclude the issues raised in Unipro’s reconsideration motion were identical in substance to the issues in its original motion to vacate. Accordingly, we lack jurisdiction to address the circuit court’s denial of the motion for reconsideration.

³ Unipro asserts in its brief to this court that “the circuit court indicated [at the April 5, 2019 hearing] that the original Motion appeared to be lacking in support” Unipro further asserts “the circuit court indicated to counsel for Unipro that a Motion for Reconsideration should be filed with all of the proper materials and support, for it was then known that the Default Judgment had been entered.” These assertions are unsupported by citation to the record on appeal and will not be considered. See *M.C.I., Inc. v. Elbin*, 146 Wis. 2d 239, 244-45, 430 N.W.2d 366 (Ct. App. 1988). Indeed, as mentioned, Unipro failed to request a transcript of the April 5 hearing.

Therefore,

IT IS ORDERED that the appeal is dismissed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals