

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2018-003675

10/10/2018

HONORABLE DANIEL J. KILEY

CLERK OF THE COURT
C. Mai
Deputy

FIERCE INVESTMENTS LTD

ROOPALI HARDIN DESAI

v.

AZTEC COPPER INC, et al.

STEPHEN C RICH

COMM. ABRAMSON
JUDGE KILEY

MINUTE ENTRY

The Court has reviewed and considered the Motion to Set Aside Default (“Motion”) filed by Defendant Aztec Copper, Inc. (“Aztec”) on August 20, 2018, and the Response to Aztec Copper Inc.’s Motion to Set Aside Default (“Response”) filed by Plaintiff Fierce Investments Ltd. (“Fierce”) on September 10, 2018. No Reply has been filed, and no party has requested Oral Argument.

Pursuant to Rule 55(c) of the Arizona Rules of Civil Procedure, a court “may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(c).” A.R.C.P. 55(c). To justify setting aside entry of default, the moving party must show

- (1) that it acted promptly in seeking relief from the entry of default;
- (2) that its failure to file a timely answer was due to either mistake, inadvertence, surprise or excusable neglect; and
- (3) that it had a meritorious defense.

Richas v. Superior Court, 133 Ariz. 512, 514, 652 P.2d 1035, 1037 (1982).

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In its Motion, Aztec offers no explanation for its failure to file a timely answer. *See generally* Motion. That fact alone justifies the denial of Aztec's Motion. *See Hirsch v. Nat'l Van Lines, Inc.*, 136 Ariz. 304, 309, 666 P.2d 49, 54 (1983) (affirming denial of motion to set aside default due to defendant's failure to establish "that its failure to file a timely answer was due to excusable neglect," and holding that, because "the defendant has failed to establish the second element we do not consider the other requirements"). Further, Aztec makes no effort to show that it acted promptly in seeking relief from the entry of default, nor does it offer any explanation for its delay in filing its Motion for over five months after the default became effective.

Aztec asserts that it has a "meritorious defense" to the Plaintiff's claims because, it contends, the Court lacks jurisdiction to grant Fierce's requested relief. Motion at p. 2. Aztec supports this contention with its assertion that Fierce "has produced no evidence to support its assertion" that it is an Aztec shareholder, and therefore that Fierce has failed to establish "standing" to "inspect" Aztec's books and records. *Id.* Fierce disputes Aztec's contention that Fierce is not a shareholder. Response at pp. 8-9.

"A meritorious defense must be established by facts and cannot be established through conclusions, assumptions or affidavits based on other than personal knowledge." *Richas*, 133 Ariz. at 514, 652 P.2d at 1037. Here, as Fierce correctly notes, Aztec has not supported its contention about its purportedly meritorious defense with any affidavit or other evidence. Instead, it supports its contention that Fierce is not a shareholder with an unsworn letter from Aztec's former attorney stating, without identifying any supporting evidence, that "Fierce voluntarily cancelled its 40,000,000 Aztec shares..." Exhibit A to Motion at p. 2. The unsworn and conclusory letter submitted by Aztec falls far short of establishing that Aztec had a meritorious defense to Fierce's claims.

Aztec's assertion that "[t]he Courts prefer to make decisions on the merits," Motion at p. 2, while true, does not warrant setting aside the default. As Arizona courts have long held, while "[t]he law favors resolution on the merits," a countervailing "principle of finality in proceedings" must also "be recognized and given effect." *Richas*, 133 Ariz. at 514, 652 P.2d at 1037. Pursuant to this principle of finality, a defendant seeking to set aside a default must establish "legal justification" for its request. *Id.* (citation and internal quotations omitted). Here, Aztec has not come close to making the requisite showing that it "sought relief reasonably promptly," that it failed to file a timely answer due to "mistake, surprise, inadvertence or excusable neglect," or that it "had a meritorious defense." *Id.* No good cause appearing,

IT IS ORDERED denying the Motion to Set Aside Default.