No. 118

Manhattan Telecommunications Corporation,
Appellant,
v.
H & A Locksmith, Inc., &c., et al.,
Defendants,
Ariq Vanunu,
Respondent.

Jonathan D. Bachrach, for appellant.
Mark F. Heinze, for respondent.

SMITH, J.:

CPLR 3215(f) requires an applicant for a default judgment to file "proof of the facts constituting the claim." In Woodson v Mendon Leasing Corp. (100 NY2d 62, 71 [2003]), we left open the question of whether non-compliance with this requirement

is a jurisdictional defect that "renders a default judgment a 'nullity.'" We now hold that the defect is not jurisdictional.

Plaintiff sued a number of corporations and an individual, Ariq Vanunu, alleging that plaintiff had provided telephone service to defendants pursuant to a written agreement, and had not been paid. The complaint alleged that Vanunu was "a principal officer in all the corporate defendant entities"; it did not attach the agreement or allege that Vanunu had signed it in his individual capacity. All defendants defaulted, and a default judgment was entered on November 28, 2008.

On November 5, 2009, Vanunu moved to vacate the judgment, asserting that his default was excusable and that he had meritorious defenses to the action. Supreme Court denied the motion, finding that Vanunu's delay in defending himself was not excusable. The Appellate Division reversed without reaching the issue of excusable default, holding that because "plaintiff failed to provide . . . evidence that [Vanunu] was personally liable for the stated claims . . . . the default judgment was a nullity" (Manhattan Telecom. Corp. v H & A Locksmith, Inc., 82 AD3d 674 [1st Dept 2011]). The Appellate Division granted leave to appeal, certifying the question of whether its order was properly made. We answer the question in the negative, and reverse.

We assume for present purposes that the Appellate Division was correct in holding that plaintiff's complaint,

though verified, failed to supply "proof of the facts constituting the claim" against Vanunu, as CPLR 3215(f) requires. Thus the default judgment was defective, but not every defect in a default judgment requires or permits a court to set it aside. CPLR 5015(a) (1) authorizes the court that rendered a judgment to relieve a party from it "upon the ground of . . . excusable default" -- a ground that Supreme Court found to be absent here. The question raised by this appeal is whether the defect is jurisdictional -- i.e., whether it was so fundamental that it deprived the court of power to enter the judgment, rendering the judgment a nullity whether Vanunu's default was excusable or not. This question has divided the Appellate Division departments (see Natradeze v Rubin, 33 AD3d 535 [1st Dept 2006] [holding defect jurisdictional]; State of New York v Willams, 44 AD3d 1149, 1151-1152 [3d Dept 2007] [same]; Westcott v Niagara-Orient Agency, 122 AD2d 557, 558 [4th Dept 1986] [same]; but see Zaidman v Zaidman, 90 AD3d 1035, 1036-1037 [2d Dept 2011] [holding defect non-jurisdictional]; Araujo v Aviles, 33 AD3d 830 [2d Dept 2006] [same]; Freccia v Carullo, 93 AD2d 281, 284 [2d Dept 1983)] [same]).

As we explained in Lacks v Lacks (41 NY2d 71, 74-75 [1976] [Breitel, Ch. J.]), the word "jurisdiction" is often loosely used. But in applying the principle "that a judgment rendered without subject matter jurisdiction is void, and that the defect may be raised at any time and may not be waived" (id.

at 75), it is necessary to understand the word in its strict, narrow sense. So understood, it refers to objections that are "fundamental to the power of adjudication of a court" (id. at 74). "Lack of jurisdiction" should not be used to mean merely "that elements of a cause of action are absent" (id.), but that the matter before the court was not the kind of matter on which the court had power to rule.

The defect in the default judgment before us is not jurisdictional in this sense. A failure to submit the proof required by CPLR 3215(f) should lead a court to deny an application for a default judgment, but a court that does not comply with this rule has merely committed an error -- it has not usurped a power it does not have. The error can be corrected by the means provided by law -- i.e., by an application for relief from the judgment pursuant to CPLR 5015. It does not justify treating the judgment as a nullity. As the Appellate Division said in Freccia: "the court had subject matter jurisdiction over the case which included the concomitant power to enter a default judgment in favor of plaintiff" (93 AD2d at 288-289).

The result we reach today follows from our decision in Wilson v Galicia Contr. & Restoration Corp. (10 NY3d 827, 829 [2008]), where we refused to set aside a default judgment despite the defaulting party's contention "that CPLR 3215(f) renders the judgment a nullity." We relied in Wilson on the party's failure to preserve its argument (id. at 829-830). But if the defect

were truly jurisdictional -- if the court that entered it was powerless to do so -- a lack of preservation would not matter. Wilson thus implies that a defect of this kind is non-jurisdictional, as we now hold.

Accordingly, the order of the Appellate Division should be reversed, with costs, the case remitted to the Appellate Division for consideration of issues raised but not reached on the appeal to that court, and the certified question answered in the negative.

* * * * * * * * * * * * * * * * *

Order reversed, with costs, case remitted to the Appellate Division, First Department, for consideration of issues raised but not determined on the appeal to that court, and certified question answered in the negative. Opinion by Judge Smith. Chief Judge Lippman and Judges Graffeo, Read, Pigott and Rivera concur. Judge Abdus-Salaam took no part.

Decided May 30, 2013