

**STATE OF MICHIGAN  
IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND  
BUSINESS COURT**

**BONNER HOLDINGS LLC, HAZIM ABRO,  
GHANIM ABRO, ROMAN STRATEGY GROUP,  
LLC, VIRTUE INVESTMENT LLC,  
MIDWEST HORIZON HOLDINGS LLC,  
BRITTEN COLE INVESTMENT GROUP LLC,  
and MAJOR INVESTMENT GROUP LLC,**

**Case No. 23-203660-CB  
Hon. Victoria A. Valentine**

**Plaintiffs,**

**v**

**SUGAR LEAF PROPERTIES I, LLC,  
STEVENS AUDISH, DOREEN MANSOUR,  
JOSHUA COLTON, BOBBY BIDAWID,  
FRANK DIDARIO, OG CAPITAL, LLC,  
and NAHLA KHALIL,**

**Defendants.**

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**OPINION AND ORDER REGARDING DEFENDANTS SUGAR LEAF PROPERTIES I,  
LLC,  
AND STEVENS AUDISH'S MOTION TO SET ASIDE DEFAULTS**

At a session of Court  
held in Oakland County, Michigan  
on 5/7/2024  
Present: HON. VICTORIA A. VALENTINE

**OPINION**

This matter is before the Court on Defendants Sugar Leaf Properties I, LLC and Stevens Audish’s Motion to Set Aside Defaults entered on January 23, 2024. The Court has reviewed the pleadings, motion, and response, and has heard oral argument on the motion.<sup>1</sup>

## I.

### Overview

Defendant Stevens Audish (“Audish”) is the sole Member and Manager of Sugar Leaf Properties I, LLC (“Sugar Leaf”). Sugar Leaf operates a licensed marijuana facility in Marcellus Michigan. Plaintiffs allegedly invested \$7,000,000 in Sugar Leaf upon execution of a Subscription Agreement in 2021.<sup>2</sup>

In a Complaint filed on November 3, 2023, Plaintiffs alleged claims of Breach of Subscription Agreement (Count I); Breach of Memorandum of Understanding (Count III (sic)); Minority Member Oppressions (Count IV (sic)); Conversion (Count V (sic)); and requested the Appointment of a Receiver (Count VI (sic)) against Audish, Sugar Leaf, and others. Plaintiffs sought and obtained Orders for Alternative Service on Audish and Sugar Leaf.<sup>3</sup> Audish and Sugar Leaf were apparently served by tacking on December 20, 2023, and on December 23, 2023 by First Class Mail.<sup>4</sup>

On January 17, 2024 Defendant Audish, in propria persona, filed on his own behalf and on behalf of Sugar Leaf in which he sought an order staying proceedings and compelling the parties

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<sup>1</sup> The Court will not consider the unauthorized reply brief filed by Defendants on April 9, 2024. *See* MCR 2.119(A)(2)(b).

<sup>2</sup> Complaint, ¶ 38.

<sup>3</sup> December 18, 2023, Orders permitting service by First Class mail and tacking.

<sup>4</sup> Pl’s Response, Exhibit 2, Process Server Affidavit, ¶ 10. Plaintiffs assert that service was made by registered mail on December 21, 2023, however, the certificates attached to Plaintiffs’ response as Exhibit 3 indicate that service was made by first-class mail on December 23, 2023.

to arbitration. On January 22, 2024, Defaults were filed by Plaintiffs and on January 23, 2024 Defaults were entered against Audish and Sugar Loaf. In an Order dated February 1, 2024, this Court ordered that the praecipe for Defendants' Motion to Compel Arbitration scheduling the matter for hearing on February 7, 2024 be dismissed.<sup>5</sup> This Motion to set aside the defaults was filed on March 12, 2024.

## II.

### Analysis

The decision to grant or deny a motion to set aside a default is within this Court's discretion. *Shawl v Spence Bros, Inc*, 280 Mich App 213, 220; 760 NW2d 674 (2008). "[A]lthough the law favors the determination of claims on the merits, it has also been said that the policy of this state is generally against setting aside defaults and default judgments that have been properly entered." *Id.* at 221.

Under MCR 2.603(D)(1):

A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and a statement of facts showing a meritorious defense, verified in the manner prescribed by MCR 1.109(D)(3), is filed.

Good cause and a meritorious defense are distinct requirements, and each must be demonstrated to warrant setting aside a default. *Allen-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 229; 600 NW2d 638 (1999).

### Good Cause

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<sup>5</sup> The Court noted that the requirements of MCR 2.119(A)(3) and MCR 2.119(C)(1) were not satisfied and that, Audish, as a non-attorney could file the motion on his own behalf but could not file on behalf of Sugar Loaf.

“Good cause” can be shown by: (1) a substantial defect or irregularity in the proceedings upon which the default was based, (2) a reasonable excuse for failure to comply with the requirements which created the default, or (3) some other reason showing that manifest injustice would result from permitting the default to stand.” *Shawl*, 280 Mich App at 221 (quotation marks and citations omitted). Under *Shawl*, factors relevant to whether a party has shown good cause are:

- (1) whether the party completely failed to respond or simply missed the deadline to file;
- (2) if the party simply missed the deadline to file, how long after the deadline the filing occurred;
- (3) the duration between entry of the default judgment and the filing of the motion to set aside the judgment;
- (4) whether there was defective process or notice;
- (5) the circumstances behind the failure to file or timely file;
- (6) whether the failure was knowing or intentional;
- (7) the size of the judgment and the amount of costs due under MCR 2.603(D)(4);
- (8) whether the default judgment results in an ongoing liability (as with paternity or child support); and
- (9) if an insurer is involved, whether internal policies of the company were followed. [*Shawl*, 280 Mich App at 238 (footnote omitted).]

The Court is satisfied that consideration of relevant factors indicate that Defendants have demonstrated “good cause.” On January 17, 2024 Defendant Audish, in propria persona, filed a Motion to Compel Arbitration on his own behalf and on behalf of Sugar Leaf, in which he sought an order staying proceedings and compelling the parties to arbitration. Defendants assert and, Plaintiff does not dispute, that the Motion to Compel Arbitration was filed within the time to “file an answer or take other action permitted by law or [the Michigan Court Rules]” as provided by the Court Rules.<sup>6</sup> *See* MCR 2.108(A). Thus, Defendants did not “completely fail to respond” to the

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<sup>6</sup> This Court does not decide whether the Motion to Compel Arbitration is “other action permitted by law or these rules” under MCR 2.108(A). Defendants state that “[t]o the extent that the January 23, 2024 defaults were entered while the Motion to Compel Arbitration was still pending . . . the entry of default appears to be a procedural defect or irregularity.” However, Defendants make no legal argument that the Motion to Compel Arbitration qualifies “as other action permitted by law or [the Court Rules]” and it is not this Court’s responsibility to do so. *Wolfe v Wayne-Westland Community Schs*, 267 Mich App 130, 139; 703 NW2d 480 (2005) (“A party may not merely announce its position and

Complaint. Additionally, the circumstances behind any fail to file or timely file appear to relate to the fact that Defendant Audish was acting in propria persona. Furthermore, Plaintiffs sought defaults immediately after the deadline for a response was required. *See Tolas Oil & Gas Exploration v Bach Serv & Manufacturing, LLC*, \_\_ Mich App \_\_; \_\_ NW3d \_\_ (2023) (Docket No. 359090), slip op at 4 (considering the relatively short time after the deadline that the Plaintiff sought a default against a self-represented defendant and an unrepresented entity). Lastly, contrary to Plaintiff's argument, there was not an unreasonable amount of time, given that Defendants were not represented by counsel, between the time the default was entered, January 22, 2024, and the time the motion to set aside was filed on March 12, 2024.

#### Meritorious Defense

To demonstrate a meritorious defense, the moving party must file an affidavit setting forth sufficient facts to support a defense that, if proven, would afford the moving party a defense against the plaintiff's claim. *Tindle v Legend Health, PLLC*, \_\_ Mich App \_\_; \_\_ NW3d \_\_ (2023) (Docket No. 360861); slip op. at 6. The affiant must have personal knowledge of the facts, state admissible facts with particularity, and show that the affiant can testify competently to the facts averred. *Huntington Nat'l Bank v Ristich*, 292 Mich App 376, 392; 808 NW2d 511 (2011).

In determining whether a defendant has a meritorious defense, the trial court should consider whether the affidavit contains evidence that:

(1) plaintiff cannot prove or the defendant can disprove an element of the claim or a statutory requirement; (2) a ground for summary disposition exists under MCR 2.116(C)(2), (3), (5), (6), (7), or (8); or (3) the plaintiff's claim rests on evidence that is inadmissible." [*Shawl*, 280 Mich App at 238.]

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leave it to this Court to discover and rationalize the basis for [its] claims or give issues cursory treatment with little or no citation to supporting authority.")

The affidavit submitted typically must identify evidence adequate to inform the trial court whether the movant has a meritorious defense. *Tolas Oil & Gas Exploration v Bach Serv & Manufacturing, LLC*, \_\_ Mich App \_\_ ; \_\_ NW3d \_\_ (2023) (Docket No. 359090), slip op at 5.

In this case, Defendants rely on an affidavit asserting that the Sugar Leaf Operating Agreement, Section 12.5 provides for private arbitration and the terms and conditions of the Operating Agreement were incorporated in Sugar Leaf’s Subscription Agreement.<sup>7</sup> Plaintiffs do not argue that the existence of an arbitration provision cannot be a meritorious defense. As was described above, the Court of Appeals in *Shawl* stated that an affidavit of meritorious defense should be considered to determine whether “a ground for summary disposition exists under MCR 2.116(C)(2), (3), (5), (6), (7), or (8).” *Shawl*, 280 Mich App at 238. The existence of an agreement to arbitrate is one of the circumstances upon which summary disposition may be granted under MCR 2.116(C)(7). Thus, it appears that, under *Shawl*, an agreement to arbitrate may be a meritorious defense.

Plaintiffs argue that the Affidavit of Meritorious Defense insufficiently authenticates the agreements relied on by Defendants in support of the arbitration argument. Plaintiffs state that the Subscription and Operating Agreements attached to Defendants’ Motion are not signed. However, Plaintiffs attach to their Complaint as Exhibit A an Operating Agreement for Sugar Leaf Properties which continues an arbitration provision in Section 12.5. Plaintiffs also attach to their Complaint as Exhibit B a Subscription Agreement which states on page 2 that a subscription is subject to the terms and conditions of the Operating Agreement. Plaintiffs’ Complaint alleges, in part, breach of the Subscription Agreement and states that “the Subscription Agreement is a valid contract

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<sup>7</sup> Motion, Exhibit 1, Audish Affidavit.

between Plaintiffs and Defendants.”<sup>8</sup> Plaintiffs also allege that under the Operating Agreement they are entitled to receive 100% return on their capital contributions.<sup>9</sup> Given Plaintiffs’ reliance on the Operating Agreement and the Subscription Agreement in support of their claims, the Court is not persuaded by the argument that the Affidavit of Meritorious Defense is inadequate.<sup>10</sup>

## ORDER

Based upon the foregoing Opinion:

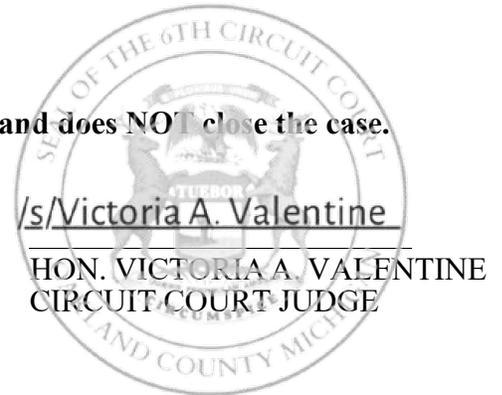
**IT IS HEREBY ORDERED** that Defendants Sugar Leaf Properties I, LLC and Stevens Audish’s Motion to Set Aside Defaults is hereby **GRANTED**;

**IT IS FURTHER ORDERED** that Defendants Sugar Leaf Properties I, LLC and Stevens Audish have 21 days from the date of this Order to “serve and filed an answer or take other action permitted by law or [the Michigan Court Rules.]”

**IT IS SO ORDERED.**

**This Order does NOT resolve the last pending matter and does NOT close the case.**

5/7/24



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<sup>8</sup> Complaint, ¶ 51.

<sup>9</sup> *Id.* ¶ 56.

<sup>10</sup> The Court has not done a line-by-line comparison of the agreements attached to the Affidavit and the agreements attached to the Complaint. But, as was described above, relevant provisions of those documents appear to be the same.

