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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-565**

City of Elko New Market,
Respondent,

vs.

Giles Properties, Inc., et al.,
Defendants,

Premier Bank Minnesota,
Appellant.

**Filed December 14, 2010
Affirmed
Worke, Judge**

Scott County District Court
File No. 70-CV-08-27970

Thomas M. Scott, Campbell Knutson, P.A., Eagan, Minnesota (for respondent)

Eric D. Cook, Robert Q. Williams, Wilford & Geske, P.A., Woodbury, Minnesota (for
appellant)

Considered and decided by Bjorkman, Presiding Judge; Kalitowski, Judge; and
Worke, Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellant argues that the district court abused its discretion by denying its motion
to vacate the default judgment obtained by respondent. We affirm.

FACTS

This dispute stems from three failed real-estate developments. Respondent City of Elko New Market initiated an action seeking a judgment against the developer for municipal services provided to the developments, a government lien, and prioritization of the government lien over all other interests in the properties. Appellant Premier Bank Minnesota possessed a mortgage interest in one of the three developments; only a small fraction of the total amount sought by respondent was attributed to the development in which appellant held its mortgage interest. Believing that respondent's lien against the development would be minimal, appellant decided not to answer the complaint and to, instead, observe how the developer defended the action. But the developer also failed to answer the complaint. The mortgagors and lienors of the other two developments answered the complaint and were dismissed by respondent, and respondent moved for default judgment against appellant and the developer. The district court entered a default judgment against the developer and prioritized the cumulative total of respondent's lien against all three developments over appellant's mortgage.

A notice of entry of judgment and judgment was mailed to appellant on May 8, 2009. On June 23, respondent initiated foreclosure proceedings on its lien and served appellant with notice of the proceedings, which prompted a response from appellant. The parties ceased communicating on July 14, and the sheriff's sale was conducted on August 25. Appellant moved the district court to vacate the default judgment on August 27, and the district court denied the motion. This appeal follows.

DECISION

A party may move the district court for relief from a final judgment on the grounds of “[m]istake, inadvertence, surprise, or excusable neglect[.]” Minn. R. Civ. P. 60.02(a). To open a default judgment, a party must establish (1) “a reasonable defense on the merits,” (2) “a reasonable excuse for [] failure or neglect to answer,” (3) a showing of “due diligence after notice of the entry of judgment,” and (4) a lack of “substantial prejudice” to the opposing party if the judgment is reopened. *Hinz v. Northland Milk & Ice Cream Co.*, 237 Minn. 28, 30, 53 N.W.2d 454, 456 (1952). Generally, relief is warranted only when all four factors are satisfied. *Nguyen v. State Farm Mut. Auto. Ins. Co.*, 558 N.W.2d 487, 490 (Minn. 1997). But a weak showing on one factor may be excusable if showings on the other three factors are strong. *Black v. Rimmer*, 700 N.W.2d 521, 528 (Minn. App. 2005), *review dismissed* (Minn. Sept. 28, 2005). The decision of whether to vacate a default judgment largely rests within the discretion of the district court, and will not be reversed on appeal absent a clear abuse of discretion. *Riemer v. Zahn*, 420 N.W.2d 659, 661 (Minn. App. 1988).

Appellant asserts that it satisfied all four *Hinz* factors and, thus, the district court abused its discretion by denying the motion to vacate. But while appellant’s reasonable defense on the merits is arguable, the remaining three *Hinz* factors are not conclusively established.

Reasonable Excuse For Failing to Answer

Appellant argues that it demonstrated a reasonable excuse for failing to answer because it did not understand that respondent was able to prioritize the totality of its

government lien over the mortgage. The district court concluded that appellant intentionally failed to defend against respondent's action. Essentially, appellant intentionally failed to act because it did not understand that the entirety of respondent's government lien could be prioritized over its mortgage, even if only a small portion of the lien was directly related to the development in which appellant held its mortgage interest. *See* Minn. Stat. § 514.67 (2008) (stating that a government lien "shall constitute and be a first and prior lien . . . upon all property in this state" owned by the lienee). A misreading of the allegations in a complaint is not a reasonable excuse for failing to answer it. *See Alderman's Inc. v. Shanks*, 515 N.W.2d 97, 102 (Minn. App. 1994) ("[I]n Minnesota, ignorance of a law is no excuse for failure to observe it."), *rev'd in part on other grounds*, 536 N.W.2d 4 (Minn. 1995). Therefore, appellant failed to advance a reasonable excuse for failing to answer.

Due Diligence

Appellant claims that it acted diligently, asserting that it was not aware of the default judgment until it received notice of respondent's sheriff's sale in June; thus, the delay in bringing a motion to vacate was only two months long. But the district court measured appellant's delay from when the notice of judgment was sent—a three-month delay rather than the two-month postponement proffered by appellant. Appellant does not deny that the notice of entry of judgment was sent by the district court in early May. Nor does appellant deny that it did not move to vacate the judgment until late August, after the sheriff's sale had been completed. Thus, the district court did not abuse its discretion in deciding that appellant failed to act diligently after receiving notice of the

default judgment. *See Sommers v. Thomas*, 251 Minn. 461, 467, 88 N.W.2d 191, 195-96 (1958) (noting that what constitutes reasonable time for seeking rule 60.02 relief varies from case to case depending on the district court's discretionary review of the facts).

Lack of Substantial Prejudice to Opposing Party

Appellant contends that respondent will not be substantially prejudiced by a reopening of the judgment because it remains entitled to collect its judgment against the developer. The district court noted that appellant essentially sought to vacate the amount and priority of respondent's lien. Because respondent dismissed the other defendants to the action on the basis of the default by appellant and the developer, the district court concluded that respondent would be prejudiced if the judgment was reopened. Regardless of the judgment obtained against the developer, appellant concedes that it elected not to defend against respondent's action. Appellant does not deny that respondent dismissed all remaining defendants after appellant and the developer were in default. Accordingly, the district court did not abuse its discretion by concluding that respondent would be substantially prejudiced if the judgment was reopened.

Appellant failed to demonstrate three of the four *Hinz* factors. Therefore, the district court did not abuse its discretion by denying appellant's motion to vacate the default judgment.

Affirmed.