



**ARIZONA SUPREME COURT  
ORAL ARGUMENT CASE SUMMARY**



**PABLO GONZALEZ, et al. v. QUOC NGUYEN, et al.  
CV-17-0117-PR**

**PARTIES:**

*Petitioners:* Quoc Nguyen (“Nguyen”) and Dysart LLC dba Quality Inn-Goodyear (“Dysart Hotel”) (collectively, “Defendants”).

*Respondents:* Pablo Gonzalez and Randi Gonzalez (collectively, “Plaintiffs”).

**FACTS:**

***The Accident and the Aftermath.*** In April 2012, Nguyen was driving a van owned by his employer, Dysart Hotel, and rear-ended a truck driven by Pablo Gonzalez, who was stopped at a red light. The police report indicated that “no injury” occurred and estimated the speed of impact at ten miles per hour. Gonzalez’s witness statement said that “[t]he collision caused my head [and] body to move forward rapidly[,] causing injury to my head, neck [and] shoulder.” Immediately after the accident, Gonzalez went to the hospital and he later underwent rotator-cuff surgery, as well as extended treatment for two bulging discs in his neck. He temporarily returned to work after the accident and later after the surgery, but eventually retired because of physical limitations.

***The Lawsuit and Default Judgment.*** After the accident, Nguyen notified Dysart Hotel, which notified its insurance carrier, Companion Commercial Insurance Company (“Companion”), through Companion’s designated claims administrator, Precision Risk Management (“Precision”). Precision then retained an independent adjustor, Carl Warren & Company (“Carl Warren”), to assist with the claim.

Plaintiffs’ counsel notified Companion of Plaintiffs’ claim in May 2012. Counsel was referred to a Carl Warren adjustor, and thereafter had an extended set of contacts with him and, later, with a Precision claims manager. To preserve Plaintiffs’ claims against the running of the statute of limitations, Plaintiffs’ counsel filed a complaint against Nguyen and Dysart Hotel in April 2014, alleging negligence. When the claim still was not resolved, Plaintiffs’ counsel finally served Dysart Hotel in December 2014 and later served Nguyen by publication. Although counsel alerted Precision and Carl Warren about service, neither Dysart Hotel nor Nguyen filed an answer. Plaintiffs’ counsel then applied for entry of default in February 2015. Although counsel notified Precision of that action, Defendants still did not file an answer.

In June 2015, Plaintiffs’ counsel moved for a default judgment and served a copy of it on Carl Warren and Precision, along with a notice of a default hearing scheduled for late June. At the hearing (which Defendants did not attend), the court heard testimony from Gonzalez regarding his injuries and damages. Plaintiffs claimed \$667,279.56, consisting of: (a) \$68,683.58 in medical bills; (b) \$42,558.92 in lost earnings; (c) \$550,000 for pain and suffering; (d) \$5,000 for his Gonzalez’s wife’s loss of care and comfort; and (e) \$518.55 in costs. In mid-July, after more documentation was provided to the court (including the police report), the superior court entered a default judgment against Defendants for the full amount requested.

***The Motion to Vacate the Judgment.*** After Plaintiffs’ counsel made a demand for

payment of the judgment, Defendants filed a motion to vacate the judgment under Rule 60(c)(6) of the Arizona Rules of Civil Procedure. They argued that the size of the judgment was unreasonable given the police report's estimate of Nguyen's ten-mile-an-hour speed of impact when the accident occurred and its statement that no one suffered any injuries. At the hearing, Defendants also argued that some of the medical records submitted to the court to substantiate the claim appeared to be unrelated to the accident. They also noted that the payroll records that Plaintiffs submitted to the court indicated that following the accident, Gonzalez returned to work almost immediately and worked full-time for about two months, casting doubt on the severity of his injuries. They also made it clear that they were seeking to vacate the finding only on damages and not on liability. In December 2015, the court entered a minute entry granting the motion to vacate as to damages, and Plaintiffs appealed.

***The Court of Appeals Decision.*** In an unpublished decision, the Court of Appeals reversed and remanded the case to the trial court with instructions to reinstate the default judgment in favor of Plaintiffs. *Gonzalez v. Nguyen*, No. 1 CA-CV 16-0141, 2017 WL 1057307 (Ariz. App. Mar. 21, 2017). It explained that a trial court may vacate a default judgment under Rule 60(c) only if the movant shows, among other things, that it has a meritorious defense. The court ruled that Defendants had failed to satisfy that requirement.

It explained that “[a] showing of a meritorious defense requires a showing by affidavit, deposition or testimony of some facts which, if proved at trial, would constitute a defense.” (Quoting *United Imps. & Exps., Inc. v. Superior Ct.*, 134 Ariz. 43, 46 (1982).) Here, it noted that Defendants submitted an affidavit from a Precision claims manager indicating that the failure to timely respond to the complaint was an administrative error but it did not say anything about potential defenses. The court also noted that at the hearing on the motion to vacate, Defendants’ counsel implicitly conceded they lacked a non-speculative defense to the damages award when he stated that Defendants might ultimately conclude that the damage claim was reasonable once discovery was completed.

It also noted that (1) Defendants were in possession of Gonzalez’s medical records and could have obtained whatever additional information they needed with minimal diligence; (2) in contrast, Plaintiffs had provided a substantial amount of evidence in support of their claim, both at the default judgment hearing and in later-provided documentation. Last, the court of appeals stated the trial court’s express finding that there was no excusable neglect for Defendants’ delay cut against granting relief.

**ISSUE:**

“After a default judgment has been entered, may the party who seeks to set aside the amount of the judgment (but not the default on liability) satisfy the Rule 60(c)(6) requirement of showing a ‘meritorious defense’ by arguing that the default judgment record itself demonstrates that the judgment amount is excessive? Or must the defendant supply additional ‘evidence’ with its motion, as the court of appeals suggested, to be entitled to Rule 60(c)(6) relief?”

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