Pursuant to Ind. Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

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IN THE
COURT OF APPEALS OF INDIANA

BOOST UP WIRELESS SOLUTIONS, LLC, and KAREN PAYNE,	)	
Appellants-Defendants,	)	
vs.	)	No. 49A04-1007-CC-461
BRIGHTPOINT NORTH AMERICA, LP,	)	
Appellees-Plaintiffs.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Thomas J. Carroll, Judge
Cause No. 49D06-0907-CC-33594

November 22, 2010

MEMORANDUM DECISION – NOT FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Boost Up Wireless, LLC (Boost Up), appeals the trial court's order denying Boost Up's motion to set aside the default judgment entered in favor of appellee-plaintiff Brightpoint North America, LP (Brightpoint), on Brightpoint's breach of contract complaint against Boost Up. Boost Up argues that it established excusable neglect and asserted a meritorious defense such that the default judgment should have been set aside. Finding no error, we affirm.

FACTS

On January 3, 2008, Boost Up, a California company, signed a Credit Application and Sales Agreement (the Agreement), pursuant to which Boost Up agreed to purchase wireless communication devices, accessories, and services from Brightpoint. Boost Up allegedly failed to pay the amounts due under the terms of the Agreement.

Consequently, on July 17, 2009, Brightpoint filed a complaint against Boost Up and Karen Payne, Boost Up's President, for breach of contract, seeking $46,083.98 plus costs and interest. On August 11, 2009, Payne, pro se, filed an answer on behalf of herself and Boost Up. Thereafter, Brightpoint moved to strike the answer with respect to Brightpoint because Payne was not an attorney and, therefore, could not appear on Boost Up's behalf pursuant to Indiana Code section 34-9-1-1. On August 27, 2009, the trial court granted Brightpoint's motion and gave Boost Up until August 31, 2009, to have an attorney appear on its behalf and file an answer. Boost Up did not do so.

On October 8, 2009, Brightpoint filed a motion for default judgment against Brightpoint, and on October 15, 2009, the trial court granted the motion. Six months

later, on April 20, 2010, attorney Mario Garcia filed an appearance on behalf of Boost Up, and on April 23, Boost Up filed a motion to set aside the default judgment. On June 1, 2010, the trial court denied Boost Up's motion, finding that Boost Up had failed to show mistake, surprise, or excusable neglect and "further failed to show enough admissible evidence to make a prima facie showing of a meritorious defense indicating to the Court that the judgment would change and that Boost Up [] would suffer an injustice if the judgment were allowed to stand." Appellant's App. p. 55. Boost Up now appeals.

DISCUSSION AND DECISION

We give substantial deference to the trial court when evaluating its ruling on a motion to set aside a default judgment. Shane v. Home Depot USA, Inc., 869 N.E.2d 1232, 1234 (Ind. Ct. App. 2007).

Pursuant to Indiana Trial Rule 60(B)(1), a default judgment may be set aside because of mistake, surprise, or excusable neglect so long as the motion to set aside the default judgment is entered not more than one year after the judgment and the movant also alleges a meritorious claim or defense. We will assume solely for argument's sake that Boost Up established excusable neglect.

That assumption does not end our inquiry, however, inasmuch as in addition to establishing excusable neglect, a party seeking to set aside a default judgment must also make a prima facie showing of a meritorious claim or defense. In the context of this case, Boost Up must present evidence that, if credited, demonstrates that a different result would be reached if the case were retried on the merits and that it is unjust to allow the

default to stand. Smith v. Johnston, 711 N.E.2d 1259, 1265 (Ind. 1999). A "meritorious defense" for these purposes includes a showing that liability is in doubt. Outback Steakhouse of Fla., Inc. v. Markley, 856 N.E.2d 65, 81 (Ind. 2006). Some admissible evidence must be presented to the trial court showing that the defaulted party would suffer an injustice if the judgment is allowed to stand. Whelchel v. Cmty. Hosps. of Ind., Inc., 629 N.E.2d 900, 903 (Ind. Ct. App. 1994).

Here, the complaint against Boost Up alleges that Boost Up breached its contract with Brightpoint by failing and/or refusing to pay amounts due under the parties' agreement. The only evidence in the record remotely tending to establish Boost Up's defense is the affidavit of Rene Pineda, a member of Boost Up. Pineda attests, among other things, that "[t]he debt allegedly owed by Boost Up relates to accounting errors committed by Brightpoint . . . and was in no way the fault of Boost Up." Appellant's App. p. 41. Other than this bald assertion, Pineda neither elaborates nor provides any specific detail about these alleged accounting errors. Furthermore, there are no bills or accounting statements attached to the affidavit supporting the allegation of accounting errors. We simply cannot conclude that such a general, self-serving, and unsupported allegation rises to the level needed to establish a meritorious defense. Consequently, the trial court did not err by denying the motion to set aside the default judgment.

The judgment of the trial court is affirmed.

VIADIK, J., and BARNES, J., concur.