NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY APPELLATE PANEL OF THE NINTH CIRCUIT

In re: DIAMOND CREEK VILLA, LLC, Debtor.	BAP No. NC-25-1147-SGC Bk. No. 22-51125
DIAMOND CREEK MASTER OWNERS ASSOCIATION; DIAMOND CREEK CONDOMINIUM OWNERS ASSOCIATION, Appellants, v. JANINA M. HOSKINS, Chapter 7 Trustee, Appellee.	Adv. No. 24-05049 **MEMORANDUM**[*]

Appeal from the United States Bankruptcy Court
for the Northern District of California
M. Elaine Hammond, Bankruptcy Judge, Presiding

Before: SPRAKER, GAN, and CORBIT, Bankruptcy Judges.

INTRODUCTION

Diamond Creek Master Owners Association ("Master HOA") and Diamond Creek Condominium Owners Association ("Condo HOA")

[*] This disposition is not appropriate for publication. Although it may be cited for whatever persuasive value it may have, *see* Fed. R. App. P. 32.1, it has no precedential value, *see* 9th Cir. BAP Rule 8024-1.

appeal from an order denying a motion to set aside a default judgment in favor of Chapter 7[1] trustee Janina M. Hoskins. The bankruptcy court held that the HOAs failed to demonstrate excusable neglect. We agree, so we AFFIRM.

FACTS[2]

A. The debtor, the receivership action against it, and its bankruptcy filing.

Diamond Creek Villa, LLC filed a voluntary chapter 11 petition in December 2022. At the time, it owned two of the three residential buildings in a condominium complex in Morgan Hill, California ("LLC Buildings"). The LLC Buildings—and certain appurtenant common areas—were encumbered by a deed of trust to secure the debtor's loan with Mechanics Bank. When the debtor defaulted on the loan, Mechanics Bank commenced a state court rents receivership action against the debtor.

After the debtor filed bankruptcy but before conversion to chapter 7, the Bank obtained a bankruptcy court order permitting the receiver to continue collecting rents from the LLC Buildings and to perform all duties

[1] Unless specified otherwise, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532, all "Rule" references are to the Federal Rules of Bankruptcy Procedure, and all "Civil Rule" references are to the Federal Rules of Civil Procedure.

[2] We exercise our discretion, when appropriate, to take judicial notice of documents electronically filed in the underlying bankruptcy case and adversary proceeding. *See Atwood v. Chase Manhattan Mortg. Co. (In re Atwood)*, 293 B.R. 227, 233 n.9 (9th Cir. BAP 2003).

as set forth in the state court's orders. The Bank also obtained relief from stay to exercise its rights against the LLC Buildings as a secured creditor.

In the fall of 2023, the bankruptcy court appointed Hoskins to serve as chapter 11 trustee at the Bank's request.[3] While serving as chapter 11 trustee, Hoskins agreed, at the Bank's urging, to leave the receiver in place. In turn, the Bank agreed to forbear from foreclosing against the LLC Buildings. Hoskins sold the LLC Buildings to a third party in April 2024 and paid the Bank in full.

B. The receiver's disposition of funds and the resulting adversary proceeding.

According to Hoskins, her estate professionals later discovered that before the LLC Buildings were sold, the receiver transferred in 2022 $269,752.71 in receivership funds as "loans" to the HOAs for operations and professional fees. In 2023 and 2024, the receiver advanced to the HOAs an additional $411,188.04 and $91,037.35, respectively. These transfers totaled $771,978.10 from the debtor's funds to the HOAs. Hoskins maintains that these funds constituted unauthorized gifts or loans of bankruptcy estate funds to the HOAs.

1. Contents and service of the complaint.

In November 2024, Hoskins commenced an adversary proceeding against the HOAs to recover all amounts advanced to the HOAs. Her

[3] When the case later was converted to chapter 7 in January 2024, Hoskins was appointed to serve as chapter 7 trustee.

adversary complaint included "Common Counts" for money had and received, money lent, and money paid for $771,978.10. The complaint also included avoidance claims for the same aggregate amount—comprised of constructive fraudulent transfers under § 548(a)(1)(B) of $269,752.71 and unauthorized postpetition transfers under § 549 of $502,225.39.

To establish service on the Master HOA, Hoskins submitted a copy of the proof of service of the summons and complaint on Jacob DeHerrera, Joseph DeHerrera,[4] and Modern Management as the registered agents for both the Master HOA and the Condo HOA. Hoskins also served Pierson Pan and Alex Sohal. Pan was the Master HOA's chief executive officer and Sohal was a lawyer who had been retained by the receiver in connection with the formation of the HOAs.

2. Entry of default and default judgment and the motion to set aside.

The HOAs did not file a responsive pleading. Consequently, Hoskins sought entry of default on January 13, 2025, which she served on the same persons and addresses as the summons and complaint.[5] In February 2025, she moved for entry of default judgment against both defendants. The

[4] It is unclear from the record whether there really were two people named DeHerrera—one named Jacob and one named Joseph. But given the other facts established by Hoskins' evidence and not disputed by the HOAs, this question is immaterial.

[5] As Hoskins later pointed out, service of her request for entry of default—and her motion for entry of default judgment—was not required by the applicable procedural rules. *See* Rule 7055 (incorporating Civil Rule 55).

bankruptcy court entered judgment against the HOAs on February 14, 2025, on some of the Common Counts and on the claims for avoidance of fraudulent and postpetition transfers. Hoskins then recorded an abstract of judgment and moved for an assignment of rights against the HOAs in aid of enforcement of her judgment against the HOAs.

In June 2025, the HOAs moved to set aside entry of default and to vacate the default judgment pursuant to Civil Rule 60(b)(1), made applicable by Rule 9024. They primarily argued that their conduct leading to the default and default judgment constituted excusable neglect and was not culpable. They disclosed that there was an internal governance dispute involving both HOAs. The dispute arose from the receiver's appointment of two competing boards of directors—one in May 2024 and the other in October 2024. The HOAs argued that the resulting disfunction and financial disarray caused by the receiver and the HOAs' former management company Modern Management, Inc. rendered it "impossible" for them to retain counsel or defend against the adversary proceeding.

Neither the HOAs nor their two witnesses who filed declarations in support of their motion denied receipt of service of the summons and complaint. Nor did they deny that they knew Hoskins had commenced the adversary proceeding against them. They further admitted that Hoskins had served Jacob DeHerrera with the summons and complaint. They identified DeHerrera as an employee of their management company Modern Management, who was listed as the HOAs' registered agent for

service of process as of November 26, 2024. The HOAs claimed that Hoskins' service of process was technically insufficient under the governing procedural rules because the day after Hoskins served the summons and complaint by mail, a change was made to the Condo HOA's registered agent information. On November 27, 2024, Wendy Wang of Westfield Manage filed with the California Secretary of State a Statement of Information designating herself as the Condo HOA's new registered agent for service of process.[6] The HOAs also asserted that Hoskins was not prejudiced by their delay in responding to her complaint and that they filed their motion within a reasonable time of entry of the default judgment.[7]

---

[6] It is undisputed that before that time, DeHerrera was the registered agent for service of process for both HOAs It also is undisputed that no changes were made to the registered agent for the Master HOA until January 2, 2025, when someone filed a resignation on behalf of DeHerrera. Wang did not file a Statement of Information identifying herself as the registered agent for the Master HOA until June 2025. It is unclear which, if either, of the competing boards of directors authorized Wang or Westfield in November 2024 to make changes to the Condo HOA's registered agent information. Indeed, the only evidence the HOAs submitted pertaining to management companies states that Modern Management was the HOAs' management company until December 2024, and Westfield Manage did not replace Modern Management until January 2025. Regardless, counsel for Hoskins, Charles Maher, provided unchallenged declaration testimony in opposition to the HOAs' motion stating that DeHerrera admitted to him on June 30, 2025, that DeHerrera sent the summons and complaint to Wang upon his receipt of those documents. The HOAs have not disputed this assertion.

[7] The HOAs additionally argued that they had a "meritorious defense" to Hoskins' adversary proceeding. But the HOAs alleged no specific facts in support of their meritorious defense argument. Furthermore, none of their contentions amounted to a denial of Hoskins' allegations. Nor did any of these contentions legally negate the HOAs' liability for the conduct alleged in Hoskins' complaint. Instead, the HOAs

3. Opposition to the motion to set aside.

Hoskins opposed the motion to set aside. Her counsel, Charles Maher, submitted a declaration in support of her opposition. His declaration detailed the service of the complaint and summons but also recounted his communications with multiple individuals regarding the complaint during the fall of 2024 and winter and spring of 2025.[8] Maher's declaration and accompanying exhibits detailed the following points:

- In October 2024, Attorney Andrew Silva contacted Maher to inquire about the receiver's continuing authority over the HOAs. At that time, Silva told Maher that his law firm represented the party who purchased the LLC Buildings at Hoskins' bankruptcy sale. (However, Silva later identified his law firm as also representing both HOAs.[9])

---

contended that certain third parties needed to be brought into the litigation because they were primarily responsible for the bankruptcy estate's damages and not the HOAs. Because we are affirming on the basis of the bankruptcy court's culpability/excusable neglect determination, we decline to further address the HOAs' meritorious defense argument.

[8] Maher evidently provided all this information to support Hoskins' assertion that the HOAs had actual knowledge of the complaint and of the need to respond. The HOAs have never denied this.

[9] Silva filed a declaration in support of the motion to set aside stating that he is a lawyer with the law firm representing both HOAs. Silva's law firm filed the HOAs' motion to set aside and has represented the HOAs in the instant appeal. Silva's declaration presented the basic facts concerning the appointment of the HOAs' two competing boards of directors and discussed Hoskins' service on the registered agent. Silva's declaration did not mention his multiple discussions with Maher—which are detailed immediately below.

- In November 2024, two weeks before Hoskins filed her complaint, Maher contacted Silva to discuss the receivership. That day, Maher emailed him a copy of his draft complaint against the HOA and discussed the grounds for the complaint with him.
- Maher followed up with Silva shortly before the complaint was filed. Silva responded that he was willing to talk and open to ideas but was "not sure what authority I could negotiate on behalf of the HOAs since everything is so messy."
- Maher then sent Silva the summons and complaint the day it was filed. Maher and Silva exchanged additional communications in December 2024 and January 2025 regarding the adversary proceeding and the status of the HOAs' efforts to respond to the complaint.
- December 26, 2024 was the deadline to respond to the complaint. When the HOAs failed to respond, Maher emailed Silva to ask whether they had retained counsel and noted that no one had contacted him and no answer was filed. Silva responded that he would clarify the situation after the holiday.
- On January 6, 2025, Silva asked Maher for the deadline to respond and informed him that the Master HOA was looking for counsel and that his firm would be representing the Condo HOA, though he was waiting to get the engagement letter signed. Maher responded that the parties needed to execute a stipulation and to submit an order to continue the deadline to answer, "so I don't get in trouble with the

court for not acting on the default." Maher then emailed Silva on January 9, 2025, stating that he could not delay seeking default any further.

- On March 19, 2025, attorney Reggie Schubert emailed Maher to advise him that "Diamond Creek Owners Association" had recently engaged his law firm "related to the adversary proceeding and default judgment that was issued; Schubert asked Maher for his thoughts and the trustee's position.
- Maher spoke with Schubert on March 28, 2025, but failed to hear from him afterwards.
- On May 29, 2025, Silva sent Maher an email asking Hoskins to stipulate to an order setting aside the judgment. Maher declined Silva's request.

Based on Maher's efforts to prompt the HOAs to respond, Hoskins argued that the HOAs' conduct was culpable and did not constitute excusable neglect. Hoskins further claimed that the debtor's bankruptcy estate would be prejudiced if the default and default judgment were set aside as it already had incurred roughly $36,000 in fees obtaining and enforcing the default judgment.

In their reply, the HOAs did not challenge Hoskins' claim that they knew in advance about the complaint and understood the requirement to file a response. Nor did they challenge Hoskins' history of attorney communications. Instead, they pressed their contention that the contested

and chaotic transition of HOA governance and management justified their failure to timely respond. As in their moving papers, the HOAs' reply did not deny receipt of $771,978.10 in bankruptcy estate funds. Nor did they deny that the bankruptcy estate received nothing in exchange for these transfers.

4. Denial of the motion to set aside.

The bankruptcy court denied the motion to set aside at a hearing held on July 28, 2025. The court found that the HOAs had not shown excusable neglect. On August 6, 2025, the court entered its order denying the motion to set aside, and the HOAs timely appealed.

JURISDICTION

The bankruptcy court had jurisdiction under 28 U.S.C. §§ 1334 and 157. We have jurisdiction under 28 U.S.C. § 158.

ISSUE

Did the bankruptcy court abuse its discretion when it denied the HOAs motion to set aside?

STANDARD OF REVIEW

Denial of a motion to set aside a default judgment under Civil Rule 60(b)(1) is reviewed for abuse of discretion. *Brandt v. Am. Bankers Ins. Co. of Fla.*, 653 F.3d 1108, 1110 (9th Cir. 2011). The bankruptcy court abuses its discretion if it incorrectly applies the law or its factual findings are illogical, implausible, or without support in the record. *See TrafficSchool.com, Inc. v. Edriver Inc.*, 653 F.3d 820, 832 (9th Cir. 2011).

DISCUSSION

On appeal, the HOAs primarily argue that the bankruptcy court incorrectly determined that they failed to establish excusable neglect. They additionally argue that they demonstrated meritorious defenses to Hoskins' claims for relief. They also assert that they filed their motion to set aside within a reasonable time and that Hoskins has not been prejudiced by their delay. Before we address any of these arguments, we reference the controlling legal standards.

A. Standards for setting aside a default judgment under Civil Rule 60(b)(1).

Civil Rule 60(b)(1) allows relief from a judgment or order when the moving party establishes "mistake, inadvertence, surprise or excusable neglect . . . ." In assessing whether to grant Civil Rule 60(b)(1) relief in the context of a default judgment, trial courts typically must consider three factors: (1) whether the defendant's "culpable conduct" led to the default, (2) whether the defendant had a "meritorious defense," and (3) whether reopening the default judgment would "prejudice" the plaintiff. *See United States v. Signed Personal Check No. 730 of Yubran S. Mesle ("Mesle")*, 615 F.3d 1085, 1091 (9th Cir. 2010) (citing *Franchise Holding II, LLC. v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 925 (9th Cir. 2004)). As the moving parties, the HOAs bore the burden of demonstrating that each of these factors favored setting aside the default judgment. *Morris v. Peralta (In re Peralta)*, 317 B.R. 381, 388 (9th Cir. BAP 2004) (citing *TCI Grp. Life Ins. Plan v.*

Knoebber, 244 F.3d 691, 696 (9th Cir. 2001), *as amended on denial of reh'g and reh'g en banc* (May 9, 2001), *and partially overruled on other grounds by Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141 (2001)). Thus, a trial court has the discretion to deny Civil Rule 60(b)(1) relief from a default judgment whenever the defendant fails to establish any one of these three factors. *Franchise Holding II, LLC*, 375 F.3d at 926.

The Ninth Circuit has held in the default judgment context that the above-referenced factors—originally derived by *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984)—subsume the excusable neglect factors set forth in *Pioneer Investment Services*.[10] *See TCI Grp. Life Ins. Plan*, 244 F.3d at 697 (observing that "the *Falk* factors are, as far as we can see, quite sufficient after *Pioneer Investment* to guide district courts' exercise of discretion under Rule 60(b)(1) in the context of default judgments"); *see also In re Peralta*, 317 B.R. at 388 (indicating that *Pioneer Investment Services'* conception of excusable neglect is "embedded" within *Falk's* culpability factor).[11]

---

[10] *See Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993) (identifying at least four factors trial courts typically must assess when considering excusable neglect: "prejudice, the length of the delay and impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.").

[11] Also embedded within the *Falk* factors are policy concerns: (1) that Civil Rule 60(b) should be liberally applied because it is "remedial in nature"; and (2) the interest of litigants and the courts in the finality of default judgments "should give way fairly readily, to further the competing interest in reaching the merits of a dispute." *TCI Grp. Life Ins. Plan*, 244 F.3d at 695-96 (citing *Falk*, 739 F.2d at 463). Taking into account these types of policy concerns, the Ninth Circuit has indicated that a trial court commits reversible error in denying a motion to set aside default and in entering default

B. Culpable conduct and excusable neglect.

According to the HOAs, the bankruptcy court erroneously determined that they failed to establish excusable neglect and that their culpable conduct led to their default. On appeal, they repeat the same facts set forth in their motion to set aside. More specifically, Silva testified in support of the motion to set aside to having personal knowledge of the following:

> 6. On or about October 7, 2024, the Receiver along with the HOAs [sic] management company Modern Management Inc. ("Modern") held a meeting where they purported to remove the board of directors appointed in May 6, 2024 ("Directors") and appointed a separate board of directors ("Disputed Directors").
>
> 7. As this action was in violation of the HOAs [sic] bylaws, since there was not a formal election, this caused an internal dispute within the HOAs, the issue being who had authority to act on behalf of the HOAs.

Decl. of Andrew Silva (June 24, 2025) at ¶¶ 5-6. And a member of the later-appointed board testified as follows:

> 5. I was appointed to the board of directors for the Masters Association by receiver Peter Martin ("Receiver"). It is my understanding, the Receiver appointed a previous board of

---

judgment unless its ruling includes a specific finding of "extreme circumstances." See *Mesle*, 615 F.3d at 1091-92. But when a default judgment already has been entered before the defendant seeks relief, *Mesle* presumably no longer applies. Instead, the trial court may—without finding anything else—exercise its discretion to deny a motion to set aside a default judgment if any one of the *Falk* factors is not satisfied. *See Brandt*, 653 F.3d at 1111 (citing *Franchise Holding II, LLC*, 375 F.3d at 926).

directors ("Directors") but did not follow proper procedures, so the Receiver appointed a new board of directors in October 2024 ("Disputed Directors").

6. This new appointment caused confusion and turmoil between the Directors and Disputed Directors which resulted in a dead lock [sic] in the HOAs ability to operate.

5. [sic] In January 2025, the management of the HOAs was picked up by Westfield Manage ("Westfield") after the previous management group, hired by the Receiver, terminated the management agreement in December 2024.

6. [sic] During this transition period of Westfield, as the manager, was not authorized to hire any representation for any new legal matters as there was a dispute between the Directors and Disputed Directors.

7. Subsequently, the Directors and Disputed Directors reached an agreement to have a vote for the directors of the HOAs, which will take place on August 5, 2025.

8. Furthermore, the Directors and Disputed Directors were able to avoid internal litigation and reached an agreement to retain counsel to file this motion to set aside default.

Decl. of Amitkumar Patel (June 24, 2025) at ¶¶5-8.

As the HOAs reason, the receiver's actions in forming competing boards of directors both claiming authority over the HOAs created conflict and chaos where neither panel of board members had clear authority to act on behalf of the HOAs. They further claim that both the receiver and their former management failed to keep adequate financial records or draft a proper budget. The HOAs conclude that the resulting chaos, conflict, and

financial disarray rendered it "impossible" for them to hire counsel to respond to Hoskins' complaint—or to even seek an extension of time to respond.

Notably, the HOAs only offer a passing attack on service of the summons and complaint. They focus on the change of the Condo HOA's registered agent. However, Hoskins also served the Master HOA's disclosed chief executive officer. Service on the named chief executive officer complies with the service requirement under Rule 7004(b) that service be directed to "an officer, a managing or general agent, or an agent authorized by appointment or law to receive service." *See generally Beneficial Cal., Inc. v. Villar (In re Villar),* 317 B.R. 88, 92–94 (9th Cir. BAP 2004) (analyzing Rule 7004(b)(3)'s provision for service of officers of the party to be served). The Master HOA has never disputed Hoskins' service of its chief executive officer. Therefore, the Master HOA has forfeited any challenge as to the sufficiency of this service on its officer.

The HOAs renew their nebulous challenge to Hoskins' service of their registered agent DeHerrera. They acknowledge that on the day Hoskins mailed the summons and complaint, DeHerrera was still designated as registered agent for both HOAs. But they argue that as of the date DeHerrera received service, he was no longer the Condo HOA's registered agent. Implicitly, they argue that service was not proper under these circumstances. Again, the HOAs offer no legal argument or authority in support of this argument, or even a reason why a plaintiff must monitor

a defendant's registered agent after service is mailed.

In *Cossio v. Cate (In re Cossio)*, 163 B.R. 150, 155 (9th Cir. BAP 1994), *aff'd*, 56 F.3d 70 (9th Cir. 1995), the Panel held that the failure of debtor's counsel to update the attorney's address did not render service by mail defective under Rule 7004. As we explained in *Cossio,* a proper return of service is prima facie evidence of valid service by mail under Rule 7004. *Id.* at 154-55. There, the attorney testified that he never received the summons and complaint. Yet, service was valid "even though Cossio presented evidence that service had not been actually received." *Id.* at 155. In short, the propriety of service by mail is measured at the time of mailing, and "does not require actual receipt by the person being served." *Ruiz v. Loera (In re Ruiz),* 2006 WL 6811033, at *3 (9th Cir. BAP Apr. 7, 2006) (quoting *Cossio*, 163 B.R. at 154). Though *Cossio* and *Ruiz* involved service under Rule 7004(b)(9), we see no material difference in the circumstances presented here, and the HOAs have offered no analysis to suggest otherwise. Hoskins properly served the HOAs at the address of record for their registered agent. Service was proper on both HOAs when sent, and it complied with Rule 7004(b)(3).

Importantly, the HOAs' motion to set aside and their briefing on appeal never attempted to claim that the HOAs lacked either knowledge of Hoskins' complaint or an understanding that their failure to respond would result in entry of default and a default judgment. To the contrary, the undisputed evidence in the record reflects that the HOAs and Hoskins

communicated about the complaint through attorney Silva. Though Silva stated that he was not qualified to practice law before the bankruptcy court, he never attempted to rebut Hoskins' evidence indicating that he communicated with Maher and the HOAs about the complaint, the need to respond, and Hoskins' intention to seek default and a default judgment if no response was forthcoming.[12]

The HOAs' knowledge, understanding, and failure to timely act is not sufficient by itself to support a determination of culpable conduct. But in this instance, it goes a long way towards that end. *See TCI Grp. Life Ins. Plan*, 244 F.3d at 698-99 & n.6 (listing multiple cases). As the Ninth Circuit explained in *TCI*:

> [W]e have tended to consider the defaulting party's general familiarity with legal processes or consultation with lawyers at the time of the default as pertinent to the determination whether the party's conduct in failing to respond to legal process was deliberate, willful or in bad faith. Absent some explanation [from the defaulting party], it is fair to expect that individuals who have previously been involved in litigation or have consulted with a lawyer appreciate the consequences of failing to answer and do so only if they see some advantage to themselves. We have not held, however, nor do we hold here, that legal sophistication or lack thereof is determinative of whether the culpability standard is met.

[12] Indeed, Silva's own testimony—in which he claimed personal knowledge of what was happening with the competing boards and with management company succession during the fall of 2024 and early 2025—would be at odds with any claim he might have made about not being in contact with the HOAs' boards during this time period.

Id. at 699 n.6 (citation and parenthetical comment omitted); *see also id.* at 698 ("we have typically held that a defendant's conduct was culpable for purposes of the *Falk* factors where there is *no explanation* of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond." (emphasis added)).

Offered against any conclusion that they acted culpably is the HOAs' explanation that it was impossible for them to file a responsive pleading timely. The bankruptcy court did not make any specific, express finding in this regard. But based on the record, the court's determination of no excusable neglect obviously included an implicit finding that the HOAs' explanation was lacking. According to the HOAs, actions taken by the receiver and Modern rendered them "incapable" of timely hiring counsel to respond to the complaint or even to submit a request for an extension of time to respond. But this explanation makes no sense on its face. The firm currently representing the HOAs received multiple communications about the adversary proceeding, the need to respond to the complaint, and the default judgment. Indeed, attorney Silva told Maher on January 6, 2025, *before* entry of default was sought, that the Master HOA was looking for counsel and that his firm would be representing the Condo HOA. Yet, the HOAs did not file their motion to set aside until roughly four months after entry of the default judgment. In total, Maher details contact between January and June 2025 with three separate attorneys, including Silva, purporting to act on behalf of the HOAs and seeking to discuss the

adversary proceeding and the default. Again, the facts provided by Hoskins and Maher are not disputed by the HOAs.

Moreover, the two declarations submitted in support of the HOAs' motion to set aside failed to specify precisely how the receiver and Modern impeded their ability to answer the complaint. They merely stated, in conclusory terms, that the two panels of competing board members effectively resulted in a stalemate. According to the HOAs, neither competing board had clear legal authority to hire counsel to respond to the complaint. But this assertion is at odds with the fact that the competing boards eventually did agree to the hiring of counsel and to the filing of a motion to set aside. Nor does it explain why the HOAs could not have entered into the stipulation and order offered by Maher in January 2025. Absent from the HOAs' account is any explanation of what change allowed the HOAs to move forward at a later time, why that change could not have occurred earlier, or why it was a valid basis to ignore a known lawsuit.[13] It also is unclear how (or whether) the HOAs were able to carry out other business of the HOAs during the relevant time period.

The record amply demonstrates that the HOAs were aware of the adversary proceeding, the need to file an answer, and the default

[13] Indeed, regardless of their dispute, any board purporting to have authority to act on behalf of the HOAs also presumably had a fiduciary duty to defend the HOAs in the litigation Hoskins commenced against them. It thus remains unexplained why the boards delayed in joining together and responding to Hoskins' complaint regardless of their conflict and the alleged confusion about the status of their finances.

judgment. Though there is no evidence when they engaged counsel for the adversary, the involvement of various lawyers during this time is strong evidence that the HOAs were aware of the import of their situation. Yet, they failed to respond in any manner, even after entry of the default judgment. Their continued, knowing inaction in this instance supports the bankruptcy court's finding that the HOAs failed to establish excusable neglect because they made a calculated strategic decision to ignore Hoskins' lawsuit and their obligation to respond. We cannot say on this record that the bankruptcy court's determination that this was culpable conduct within the meaning of the *Falk* factors was clearly erroneous.[14]

CONCLUSION

For the reasons set forth above, we AFFIRM.

[14] Because we have upheld the bankruptcy court's denial of the motion to set aside based on our review of the court's determination concerning culpability and excusable neglect, we decline to address the HOAs' other arguments on appeal.