

FOR PUBLICATION

2012 NOV 26 PM 1: 26

IN THE SUPERIOR COURT
FOR THE DEPUTY CLERK OF COURT
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS

LETICIA M. PALACIOS,

Plaintiffs,

v.

JOSEPH M MENDIOLA,

Defendant.

) SMALL CLAIMS NO. 10-0157

) ORDER GRANTING MOTION TO RECONSIDER

I. INTRODUCTION

THIS MATTER came before the Court August 21, 2012, on a motion to reconsider. Attorney Michael A. White appeared on behalf of Leticia M. Palacios (“Plaintiff”). Loren A. Sutton appeared on behalf of Joseph M. Mendiola (“Defendant”). Based on a thorough review of the motion and relevant law the Court issues this written decision.

II. BACKGROUND

On May 25, 2010, a Summons and Complaint were filed with the Court. The Plaintiff, sought \$1,412.66, plus interest and attorney’s fees for rent, utilities and related charges, allegedly incurred by Defendant. On December 23, 2011, a pretrial hearing was held in Tinian. Defendant appeared personally, and Plaintiff appeared through her attorney, Mr. White. The Court denied Defendant’s request that the evidentiary hearing be held in Tinian, and set the matter for February 27, 2012, at 9:00 a.m. in Saipan.

1 On February 23, 2012, Defendant retained counsel, Loren A. Sutton and Janet H. King.
2 On February 27, 2012, Defendant failed to appear either personally or through counsel and the
3 Court entered default for the total amount of \$2,149.94: \$1,412.66 principal; \$347.28 interest;
4 \$350 attorney's fees and \$40 filing costs.

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6 On March 6, 2012, Defendant filed his "Motion to Set Aside Default Judgment
7 Pursuant to Com.R.Civ. Pro. 60(b)" ("Motion to Set Aside") which was denied by the Court
8 on June 12, 2012 in a written order. *Palacios v. Mendiola*, Small Claims No. 10-0157 (NMI
9 Super. Ct. June 12, 2012) (Order Denying Motion to Set Aside Default Judgment). On July
10 3, 2012, Defendant filed his "Motion to Reconsider Denial of Motion to Set Aside Default
11 Judgment" ("Motion") arguing that (1) the Court erred by failing to consider Defendant's
12 good faith; and (2) default should be set aside in equity pursuant to Rule 83(g), 55(c) and
13 60(b) because Defendant has a meritorious defense, no prejudice will result to Plaintiff, and
14 default was not the result of Defendant's culpable conduct. Plaintiff counters that the Court
15 properly exercised its discretion in finding there was no excusable neglect and Defendant
16 has not met its burden to show grounds for reconsideration.
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19 **III. MOTION TO RECONSIDER**

20 The Court first determines whether Defendant has demonstrated grounds for
21 reconsideration. In its discretion this Court may reconsider where there is "an intervening
22 change of controlling law, the availability of new evidence, or the need to correct a clear
23 error or prevent manifest injustice." *Camacho v. J.C. Tenorio Enterprises, Inc.*, 2 NMI 407,
24 414 (1992). Here, there has been no intervening change in the law, thus the Court considers
25 the other possible bases.
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1 **A. CLEAR ERROR**

2 Defendant suggests¹ the Court erred by not considering Defendant's good faith as a
3 factor in determining whether there was excusable neglect sufficient to set aside the default.
4 Clear error exists where a reviewing court "is left with a firm and definite conviction that a
5 mistake has been made." *Santos v. Santos*, 2000 MP 9 ¶ 3 (citing *Camacho v. L & T Int'l*
6 *Corp.*, 4 NMI 323, 325 (1996)).

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8 Here, the Court, relying on *Roberto v. De Leon Guerrero*, 4 NMI 295, 297 (1995)
9 applied equitable factors relevant to a claim of excusable neglect made pursuant to Rule
10 60(b)(1). *Palacios*, Small Claims No. 10-0157 at 6-9. Although the Court is aware of Ninth
11 Circuit case law interpreting the United States Supreme Court's *Pioneer* decision² to require
12 the use of "good faith" as a specific factor, *see Lemoge v. United States*, 587 F.3d 1188,
13 1192 (9th Cir. 2009), this Court is not bound by Ninth Circuit precedent.³ The
14 Commonwealth Supreme Court has not adopted a standard requiring a "good faith" factor.
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18 ¹ Defendant argues the Court erred in not applying the *Pioneer* factors. (Def.'s Mot. Recons. Den. Mot. To Set
19 Aside Default J. 4-5.) In his Reply, however, Defendant writes that "a claim of error on this *issue is not*
20 *strongly contended* as the Court did mention prejudice, the length of delay and the reason but not whether the
21 movant had acted in good faith." (Def.'s Reply to Pl.'s Opp'n to Mot. Mot. Recons. 2) (emphasis added).

22 ² The United States Supreme Court in *Pioneer*, interpreting the excusable neglect standard in the context of the
23 bankruptcy code held: "With regard to determining whether a party's neglect of a deadline is excusable, we are
24 in substantial agreement with the factors identified by the Court of Appeals. Because Congress has provided
25 no other guideposts for determining what sorts of neglect will be considered "excusable," we conclude that the
26 determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the
27 party's omission. 507 U.S. at 395. These include, as the Court of Appeals found, the danger of prejudice to the
28 debtor, the length of the delay and its potential 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."

29 ³ Recent Ninth Circuit cases demonstrate a trend toward a more relaxed formulation for Rule 60(b)(1)
30 determinations. *See Bateman v. United States Postal Serv.*, 231 F. 3d 1220, 1225 (9th Cir. 2000) (reasoning
31 that even "weak" reasons justifying the omission may be grounds for relief if they reflect carelessness rather
32 than deviousness or willfulness); *Ahanchian v. Xenon Pictures, Inc.*, 624 F.3d 1253, 1262 (9th Cir. 2010)
33 (finding excusable neglect where attorney's calendaring mistake was caused by the failure to apply a clear
34 local rule). In spite of this trend, Commonwealth Supreme Court has never explicitly adopted either the "good
35 faith" factor or a more relaxed approach. Although persuasive, such cases do not bind this Court.

1 Instead, in *Roberto*, issued two years after *Pioneer*, the Commonwealth Supreme Court, in
2 addressing a motion to set aside an entry of default,⁴ applied the same test used by this Court
3 in its earlier ruling. *Roberto*, 4 NMI at 297.

4 Moreover, the determination of whether to set aside a default judgment is largely
5 discretionary. The Court here applied the correct law under the facts of this case.
6 Accordingly, the Court did not commit clear error in denying the Motion to Set Aside.
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8 **B. NEW EVIDENCE**

9 Defendant marshals four exhibits in support of his Motion: an email from Ms. King
10 seeking a continuance from Plaintiff's counsel, Mr. White, which was submitted with the
11 original motion; an email from Mr. White rejecting the proposal for a continuance sent after
12 the Court entered default, also before the Court on the Motion to Set Aside; a 2006 case
13 from the Court of Appeals for Alaska;⁵ and this Court's order setting the trial date, signed by
14 Judge Govendo.
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16 None of these documents represent new evidence. The facts in the emails were
17 before the Court when it issued its earlier ruling. The case from Alaska does not represent a
18 change in controlling law; it is neither controlling nor new.
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20 Generally, to warrant reconsideration, the evidence must not have been available
21 with reasonable diligence in time to file with the original motion. *Sch. Dist. No. 1J v.*
22 *ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993) ("The overwhelming weight of authority is
23 that the failure to file documents in an original motion or opposition does not turn the late
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25 ⁴ The Court in *Roberto* addressed a motion to set aside an entry of default pursuant to Rule 55(c) rather than a
26 default judgment. The Court, however, reasoned that although Rule 55 allows the Court to set aside an entry
27 of default (as opposed to a default judgment) for good cause, freeing it from the restraints of Rule 60(b), courts
as a practical matter use the same grounds for relief laid out in 60(b).

28 ⁵ The case cited, *Case v. Municipality of Anchorage*, No. A-9082 (App. Ct. AK, January 27, 2006), deals with
the meritorious defense factor, holding that a movant need only demonstrate a legal theory of a defense.

1 filed documents into ‘newly discovered evidence.’”). Reconsideration, however, is
2 appropriate to consider evidence which “differs materially from the evidence of record when
3 the issue was first decided and . . . provides less support for that decision.” *Hamilton v.*
4 *Leavy*, 322 F.3d 776, 787 (3d Cir. 2003). Thus, reconsideration is available where
5 consideration of new facts would alter the result of the original decision.
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7 Counsel made two representations which were not before the Court when it rendered
8 its earlier decision. First, counsel represents that Ms. King had been advised by Presiding
9 Judge Naraja that an appearance in the Superior Court would constitute a conflict, which
10 would have justified her choice not to appear in Court to seek a continuance on Defendant’s
11 behalf.⁶ Second, counsel represents that since default was entered, Defendant has relayed to
12 counsel that he has certain evidence of his defense, which was not previously before the
13 Court. According to counsel, Defendant possesses documentation, including a hardware
14 store invoice, which purportedly shows that Defendant had not been occupying the rental
15 apartment for more than one year prior to the time for which Plaintiff is seeking damages,
16 and therefore he could not have caused the damage.
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19 Although these facts could have been known with reasonable diligence prior to the
20 Court’s earlier ruling, they nonetheless may support a more cognizable defense or mitigate
21 the conduct of Defendant’s attorneys. Consequently, the Court in its discretion may
22 reconsider the earlier decision to take account of these new representations.
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27 ⁶ The Court is concerned about counsel’s recent representation that attorney Janet King withdrew from
28 representing Defendant a day or two after she was initially retained February 23, 2012. The name of her law
office appears on every filing in this case including the current Motion, and her name appears in the heading,
the motion, and the signature lines of the original Motion to Set aside Default Judgment filed on March 5,
2012. As a result, the Court does not rely on that representation in considering this Motion.

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C. MANIFEST INJUSTICE

A manifest injustice is an injustice which is clear or obvious. Defendant has argued that in equity he should be allowed his day in court because (1) the Court previously found his conduct was not culpable; (2) if counsel's conduct is to blame, sanction would be a more appropriate remedy and; (3) reconsideration affords a "certain symmetry" because on August 7, 2012, Mr. White, in the same case, failed to appear at the motions hearing based on an erroneous belief about the date and location of the hearing, and Mr. Sutton agreed to a continuance, even though he had no obligation to do so.

Here, the Defendant represented that there is evidence going to a viable defense, which was previously unknown to the Court. Such evidence may affect the outcome of the Motion to Set Aside. The Court previously found Defendant's conduct in failing to appear was not culpable and there would be no prejudice to Plaintiff from hearing the case on the merits. Moreover, because the reconsideration concerns a judgment decided in default rather than on the merits, reconsideration will not unnecessarily upset the interests of finality. It would work an injustice if Defendant has to pay a judgment without being heard on the merits when he has a viable defense. In light of this concern, the Court reconsiders the Motion to Set Aside to avoid an injustice.

D. RECONSIDERATION

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In reconsidering its earlier ruling, the Court looks to the substantive law at issue. Rule 83(g), governing default in small claims cases, allows entry of default upon failure to appear. NMI R. Civ. P. 83(g). Rule 60(b)(1) is "a remedial rule which normally receives a liberal construction from courts who are concerned that cases not be decided in default against parties who are inadvertently absent." *Reyes v. Reyes*, 2001 MP 13 ¶ 22. The

1 moving party bears the burden of proving the existence of a justification for Rule 60(b)
2 relief. *Cassidy v. Tenorio*, 856 F. 2d 1412, 1415 (9th Cir. 1988). For the purpose of
3 determining whether a justification exists, the court accepts the truth of factual allegations.
4 *Id.* at 1415-16. “The application of Rule 60(b)(1)’s excusable neglect standard “is
5 committed to the discretion of the [trial] courts.” *Brandt v. Am. Bankers Ins. Co.*, 653 F.3d
6 1108, 1112 (9th Cir. 2011).⁷

8 In determining whether a default judgment should be set aside pursuant to Rule 60(b)
9 the court considers: (1) prejudice to the plaintiff if the case is reopened; (2) the existence of
10 a meritorious defense; and (3) whether the default was the result of the defendant’s culpable
11 conduct. *Roberto*, 4 NMI at 297. Courts may also consider whether the defendant acted in
12 good faith, and any other relevant factors. *See Lemoge*, 587 F.3d at 1192. The
13 determination of what conduct constitutes excusable neglect under Rule 60(b)(1) “is at
14 bottom an equitable one, taking account of all relevant circumstances surrounding the
15 party’s omission.” *Pioneer*, 507 U.S. at 395.

17 To demonstrate a meritorious defense, a movant need only assert a factual or legal
18 basis that is sufficient to raise a particular defense. *E. & J. Gallo Winery v. Cantine Rallo*,
19 *S.P.A.*, 430 F. Supp. 2d 1064, 1091 (E.D. Cal. 2005).

20 Here, the Court previously concluded Plaintiff will not be prejudiced if the case is
21 heard on the merits, and Defendant was not personally culpable for failing to appear.
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25 ⁷ “[W]hen interpreting our rules of civil procedure, which are patterned after the federal rules, we will
26 principally look to federal interpretation for guidance.” *Commonwealth Dev. Auth. v Camacho*, 2010 MP 19 ¶
27 16.

1 *Palacios*, Small Claims No. 10-0157 at 6-8. Nothing in the present Motion alters either
2 conclusion.

3 Defendant has represented that there is evidence of his defense indicating that he
4 may not be culpable for the damage alleged, weighing in favor of granting relief from the
5 judgment. Previously, the Court assigned a neutral value to the meritorious defense factor
6 because only the flimsiest basis for a defense was offered. During oral argument on the
7 Motion to Set Aside, counsel represented that his client was not in the rental at the relevant
8 time. Even though the burden to show a defense is minimal, the Court found this bare
9 assertion did not raise a defense. For example, assuming the claim is based on a contract
10 theory and there was a lease between the parties obligating Defendant to pay rent, the mere
11 assertion of being somewhere else does not provide a legal theory for a defense. By
12 contrast, counsel now represents that the Defendant has documentation proving that he had
13 not been present in the rental for over a year and could not have caused the damage alleged.
14 A year's absence demonstrates a cognizable defense because such a long period of time may
15 have legal consequences.

16 Here, Defendant claims a meritorious defense, his conduct in failing to appear is not
17 culpable, and no prejudice to Plaintiff will result from a hearing on the merits, weighing in
18 favor of granting relief. No bad faith is alleged which also weighs in favor of granting
19 relief. These equities favor a decision on the merits.

20 Further, counsel has represented that Ms. King was told by Presiding Judge Naraja
21 that an appearance in the Superior Court would present a conflict, which casts her conduct in
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1 a different light.⁸ Counsel has explained that Mr. Sutton believed in good faith that a
2 continuance would be granted based on Ms. King's representation to him. This
3 miscommunication somewhat excuses his failure to appear. As a result, the equities tip
4 slightly in Defendant's favor, justifying relief.

5 **IV. CONCLUSION AND ORDER**

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7 For the aforementioned reasons, the Motion to reconsider is **GRANTED**. The
8 default judgment is hereby **VACATED**. The parties shall stipulate to a date, time and
9 location for the hearing on the merits, to be submitted to the Court.

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11 **IT IS SO ORDERED** this 26th day of November, 2012.

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15 **HON. JOSEPH N. CAMACHO,**
16 Associate Judge

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27 ⁸ In its previous order, the Court characterized the conduct of both Defendant's attorneys as routine
28 carelessness, and suggested that an appearance by Ms. King to seek a continuance would not violate the rules
of professional conduct. If the Presiding Judge voiced a concern to her about a potential conflict, however, her
inaction is understandable.