FOR PUBLICATION

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

G4S SECURITY SERVICES (CNMI), INC.,	**CIVIL ACTION NO. 11-0323**
Plaintiff,	
v.	**ORDER DENYING DEFENDANT'S UNTIMELY RULE 60(b)(5) MOTION FOR RELIEF FROM JUDGMENT**
TANO GROUP INC.	
Defendant.	

This matter came before the Court on December 15, 2015, in Courtroom 220 on Tano Group Inc.'s Rule 60(b)(5) Motion for Relief from Judgment. Attorney Michael White appeared on the behalf of G4S Security Services (CNMI), Inc. ("G4S"), the Plaintiff. Attorney Colin Thompson appeared on the behalf of Tano Group Inc. ("Tano"), the Defendant. Tano is seeking relief from the February 16, 2012 Default Judgment.

Based on a review of the filings, oral arguments, and applicable law, the Court **DENIES** Tano's Rule 60(b)(5) Motion for Relief from Judgment.

II. BACKGROUND

On December 7, 2011, G4S filed its complaint against Tano, alleging that Tano owed a principal sum of $16,035.86 to G4S as a result of security services provided by G4S to Tano. Tano was served with the Summons on December 20, 2011, and the Declaration of Service as to the Summons and Complaint was filed with the Court on December 22, 2011, and entered by the Clerk

of Court on December 23, 2011. According to the Declaration of Service as to the Summons and Complaint, Robert Bracken, the Principal for Tano Group Inc., was personally served with the summons. Despite the December 20, 2011, service date in the Declaration of Service as to the Summons and Complaint, Mr. Bracken's declaration states that Tano apparently did not receive the summons until January 2012. Decl. of Robert Bracken at 1.

The Summons explicitly stated that "[i]f you fail to answer in accordance with this Summons, judgment by default may be taken against you for the relief demanded in the Complaint." Summons at 2. The Summons also explicitly stated that the "answer should be in writing and filed with the Clerk of Court at Susupe, Saipan." Summons at 1. An answer would have been due on January 9, 2012, twenty (20) days after the service of the Summons on December 20, 2011.

On January 17, 2012, eight days after the deadline had passed to file an answer with the Clerk of Court, Robert Bracken, the Principal of Tano Group Inc., sent a letter to Michael White, the attorney for G4S. At this point in time, Tano was acting *pro se*.[1] This letter, which was attached to Tano's Rule 60(b)(5) Motion for Relief from Judgment as Tano's Exhibit A, stated that it was intended as a response to the summons Tano had received. Mr. Bracken stated that "[b]y this letter, we are answering the summons that was received in our office on December 30, 2011," and that his "answer is timely as it is within the 20 days as noted in the summons." Tano's Exhibit A. Although the letter states that the summons was received by Tano on December 30, 2011, the Declaration of Service as to the Summons and Complaint shows that the Summons was served on December 20, 2011. Tano's letter was not filed with the Court.

[1] Mr. Thompson filed his notice of appearance on December 15, 2014.

Mr. Bracken's letter also included thirty post-dated checks.[2] According to Mr. Bracken's letter, there was a discrepancy in the amount of interest being charged to Tano, and that Tano had stopped making payments to G4S until their account statements reflected the agreed-upon interest that G4S's Administrative Manager and Tano's Accountant had agreed upon. Mr. Bracken meant for these checks to serve as a proposed settlement, and he thought that the total of $15,540.40 was the total amount Tano owed to G4S. Decl. of Robert Bracken at 1-2. Mr. Braken stated in his declaration that he "intended that the 30 checks, when cashed by Mr. White's office, would constitute full and final settlement of all sums that Tano Group owed to G4S." Decl. of Robert Bracken at 2.

Mr. White did not understand this letter to be a settlement, and when he subsequently deposited the checks he says that he was applying the checks to the balance claimed by G4S. Decl. of Michael White at 1-2. In his declaration, Mr. White states that he did not have the authority to settle his client's claim unilaterally, and if he had understood that Tano "intended its letter to be an offer of settlement," he would have either contacted his client or rejected the settlement. *Id*. at 1-2. G4S cashed the first check sometime between January 18, 2012, and February 9, 2012,[3] and cashed the thirtieth check in June 2014. Decl. of Robert Bracken at 2; G4S Exhibit A.

On February 10, 2012, a day after the first check was deposited per Mr. White's ledger, G4S filed a Request to Enter Default, as Tano had not filed any pleadings in response to G4S's complaint. On February 16, 2012, the Court entered a default judgment against Tano in the amount

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[2] The cover sheet for the checks described the checks as being post-dated checks "for settlement on account." Tano's Exhibit A. The final check, check number 23843, dated June 17, 2014, was labeled as "30TH CHECKS [sic] FINAL PAYMENT MADE," and listed $15,515.40 as the "FINAL AND FULL PAYMENT AMOUNT." *Id*. Mr. Bracken's letter did not describe these checks as a settlement, but the cover sheet for the checks describes them as being "for settlement on account." *Id*.

[3] Mr. Bracken's declaration indicates that the check was cashed on January 18, 2012; however, the payment ledger attached as Exhibit A to G4S's Opposition shows a February 9, 2012 input date. Decl. of Robert Bracken at 2; G4S Exhibit A.

$19,529.85, which included costs and pre-judgment interest from October 24, 2009 through February 10, 2012 at a rate of 9% per annum.

The last of Tano's post-dated checks were cashed in June 2014. G4S subsequently filed its Motion for Order in Aid of Judgment on October 31, 2014. In his declaration, Mr. Bracken states that he was unaware that there were any issues with the payments or with this case until October 2014, when he received the motion for order in aid of judgment. Decl. of Robert Bracken at 3. The Declaration of Service as to the Motion for Order in Aid of Judgment indicates that Mr. Bracken was actually served on November 18, 2014 with G4S's motion, so Tano has had actual notice as to the issues related to the payment of this judgment since November 2014. Mr. Thompson, representing Tano in this matter, filed his notice of appearance on December 15, 2014.

In an order in aid of judgment hearing on February 10, 2015,[4] Mr. Thompson, counsel for Tano, orally raised a number of defenses, including accord and satisfaction, laches, and settlement and release. Mr. Thompson later argued these defenses on April 14, 2015. At that time, no pleadings had been submitted to the court arguing accord and satisfaction, laches, or settlement and release. The Court ultimately granted G4S's Motion for Order in Aid of Judgment, as order in aid of judgment hearings are focused on the debtor's ability to pay. *G4S Security Services, Inc. v. Tano Group, Inc.*, Civ. No. 11-0323 (NMI Super. Ct. Aug. 14, 2015) (Order Granting Plaintiff's Motion for Order in Aid of Judgment as Order in Aid of Judgment Hearing is Focused on the Ability to Pay at 4-5) ("Order in Aid of Judgment").

Tano filed its Rule 60(b)(5) Motion for Relief from Judgment on October 14, 2015. Tano is seeking relief from the February 16, 2012 Default Judgment. Tano's Rule 60(b)(5) motion comes two months after the Court issued its Order in Aid of Judgment, eleven months after G4S's Motion

[4] The hearing for the motion for order in aid of judgment was continued multiple times at the request of the parties: on December 4, 2014, January 6, 2015, February 10, 2015, and March 3, 2015, before ultimately being heard on April 14, 2015.

for Order in Aid of Judgment, and two and a half years after the Court entered a default judgment in this case.

Tano argues that it entered into an accord and satisfaction with G4S through its thirty post-dated checks. Mot. for Relief at 1-2, 4. G4S filed its Opposition on October 29, 2015, arguing that Tano's motion is untimely, that no accord and satisfaction was entered, and that money judgments do not have prospective application. Opp. at 3, 5, 9. Tano filed its reply on November 24, 2015.

III. DISCUSSION

Under Rule 60 of the Commonwealth Rules of Civil Procedure, the Court "may relieve a party…from a final judgment, order or proceeding" if "the judgment has been satisfied, released, or discharged…or it is no longer equitable that the judgment should have prospective application." NMI R. Civ. P. 60(b)(5). As a threshold matter, the Court must address whether Tano's motion for relief from judgment was timely. NMI R. Civ. P. 60(b). Motions filed under Rule 60(b) must be filed within a "reasonable time." NMI R. Civ. P. 60(b). Although motions under Rules 60(b)(1)-(3) must be made within one year of the judgment, order, or proceeding, there is no outright time limit for other motions made under Rule 60(b), including Rule 60(b)(5). *Id.* Since the Commonwealth Rules of Civil Procedure "are patterned after the federal rules, [the Court] will principally look to federal interpretation for guidance." *Commonwealth Dev. Auth. v. Camacho*, 2010 MP 19 ¶ 16 (citing *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 60).

Relief under Rule 60 is discretionary, and the Court has the "*discretion* to relieve a party from its judgment upon a motion brought within a reasonable time." *Sullivan v Tarope*, 2006 MP ¶ 34 (emphasis in original). Since the reasonable time standard is discretionary, "an unreasonably delinquent movant has no reason to expect the court to provide relief under a discretionary rule." *Id.* Whether a Rule 60(b) motion is filed within reasonable time "depends on the facts of each case." *United States v. Holtzman*, 762 F.2d 720, 725 (9th Cir. 1985). In determining whether a delay was

reasonable, Courts take into account "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Ashford v. Steuart*, 657 F.2d 1053, 1055 (9th Cir. 1981) (construing "reasonable time" in the context of Rule 60(b)(1)). In *Federal Land Bank v. Cupples Bros.*, the Eighth Circuit held that the delay was not reasonable where the party seeking relief under Rule 60(b) waited twelve months after the passage of a statute where that statute was the basis of the relief sought under Rule 60(b). 889 F.2d 764, 767 (8 Cir. 1989).

G4S argues that Tano's motion was not made within a reasonable time, since Tano "had constructive knowledge of the Judgment by February of 2012" and "actual knowledge" by November of 2014, and yet Tano did not file the instant motion until October of 2015. Opp. at 5. In the Summons dated December 7, 2011, Tano was notified that it should file a written answer to the Complaint with the Clerk of Court within twenty (20) days of being served with the Summons. Summons at 1. The Summons explicitly states "[i]f you fail to answer in accordance with this Summons, judgment by default may be taken against you for the relief demanded in the Complaint." Summons at 2. Tano was ultimately served[5] with the Complaint and Summons on December 20, 2011, and the Declaration of Service as to the Summons and Complaint was filed with the Court on December 22, 2011. The deadline to file an answer would have been January 9, 2012.

Despite the explicit statement in the Summons that a failure to file a written answer with the Court could result in a default judgment, Tano failed to file a written answer. Instead, on January 17, 2012, eight days after the deadline to file an answer had passed, Tano sent a letter with attached checks to counsel for G4S, claiming that "[b]y this letter, we are answering the summons." Tano's

[5] According to the Declaration of Service, Mr. Bracken was personally served.

Exhibit A. Tano argues that it "reasonably believed it had settled its dispute with G4S" when G4S began depositing the check that Tano had delivered to G4S's attorney. Reply at 5. Tano claims that it had no idea that there were any problems in this case until October 2014, when G4S filed its Motion for Order in Aid of Judgment.

The Commonwealth Rules of Civil Procedure apply equally to all parties, both *pro se* litigants and those represented by counsel. *See* Com. R. Civ. P. 12(a)(1) (requiring that an answer be filed within twenty (20) days of service of the complaint). This is not a small claims proceeding, where parties are often *pro se*, and accordingly procedural rules are relaxed. *See* Com. R. Civ. P. 83. The Court notes that Mr. Bracken is the principal of a company, Tano Group Inc., and thus he is not a naïve individual being taken advantage of by an unscrupulous creditor. Mr. Bracken is a sophisticated businessman[6] who, acting without counsel, failed to properly respond to the Summons.

The Court further notes the inconsistencies between the Declaration of Service as to the Summons and Complaint, showing a date of service of December 20, 2011, the date of service listed in Mr. Bracken's letter, stating that he had been served on December 30, 2011, and the date of service stated in Mr. Bracken's declaration, stating that he had been served in January 2012. The Court gives more weight to the date in the Declaration of Service as to the Summons and Complaint,[7] as it is not possible for Tano to have been served on December 30, 2011 or in January 2012, when the Declaration of Service shows that the Summons was served on December 20, 2011, and the Declaration of Service was filed with the Court on December 22, 2011.

Tano has had several timely opportunities to raise its accord and satisfaction argument, and did not. Tano argues that it thought it had settled this case when G4S began to cash the checks,

[6] Mr. Bracken, as stated numerous times above, is the principal and owner of Tano Group, Inc. Decl. of Robert Bracken at 1.

[7] The process server who served the Summons and Complaint was Rainaldo Agulto.

which were attached to Mr. Bracken's letter to Mr. White. Tano argues that, since it did not know anything was amiss until November 2014, that its delay in bringing a Rule 60(b)(5) motion is reasonable.

The Court is not persuaded by Tano's arguments. The Summons explicitly notified Tano that failure to file an answer with the Court could lead to a default judgment. Tano's own letter clearly showed knowledge of the twenty (20) day deadline, and thus Tano would have been aware of the danger of a default judgment. Tano's Exhibit A. In addition, Tano's misstatements about when Mr. Bracken was served with the Summons leads the Court to question whether Tano was attempting to unilaterally move the deadline by which they needed to answer the Summons.

Further, Tano was on notice to the issues with payment at the very latest in November 2014, when Tano was served with G4S's Motion for Order in Aid of Judgment. By December 2014, Tano was represented by Counsel, and Tano still failed to file a Rule 60(b)(5) motion. Counsel for Tano attempted to orally argue accord and satisfaction at the motion hearings on the Motion for Order in Aid of Judgment,[8] but Tano did not properly file any motions under Rule 60(b) until October 2015.

As described above, in addressing the timeliness of Rule 60(b) motions, courts take into account "the interest in finality, the reason for delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties." *Ashford v. Steuart*, 657 F.2d at 1055. The Court entered a default judgment in February 2012, and the best reason for delay offered by Tano is that it was unaware that G4S did not accept its settlement offer. Looking to the "the practical ability of the litigant to learn earlier of the grounds relied upon," Tano had ample opportunity to learn of the grounds relied upon. Not only was Tano on notice that the failure to file

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[8] The Court did not consider Tano's arguments related to accord and satisfaction, as an Order in Aid of Judgment hearing is focused solely on the debtor's ability to pay. *See G4S Security Services, Inc. v. Tano Group, Inc.*, Civ. No. 11-0323 (NMI Super. Ct. Aug. 14, 2015) (Order Granting Plaintiff's Motion for Order in Aid of Judgment as Order in Aid of Judgment Hearing is Focused on the Ability to Pay).

an answer would lead to a default judgment,[9] but Tano also failed to properly and timely move for relief under Rule 60(b)(5) when it was served by G4S's Motion for Order in Aid of Judgment.

In *Federal Land Bank*, the moving party waited twelve months between the passage of a statute relied upon in their Rule 60(b) motion and their actual filing of the motion, and that delay was found to be unreasonable. 889 F.2d at 767. If a twelve month delay is unreasonable, then likewise the delay in the present case—where Tano has been on constructive notice since February 2012, and has been on actual notice since November 2014—is also unreasonable.

Tano's Motion for Relief from Judgment under Rule 60(b)(5) was not timely brought under these facts. Tano failed to file a timely answer to the complaint. In lieu of a properly and timely filed answer, Tano sent a letter to G4S after the deadline to answer had passed, and Tano was on notice that failing to answer the complaint would lead to a default judgment. In November 2014, when Tano was served with G4S's Motion for Order in Aid of Judgment, Tano still did not make a motion for relief under Rule 60(b)(5). Instead, Tano incorrectly argued accord and satisfaction as an alleged defense to a Motion for Order in Aid of Judgment. Tano did not make its Rule 60(b)(5) motion within a reasonable time, and thus its motion is untimely and must be denied.

IV. CONCLUSION

Accordingly, Tano's Rule 60(b)(5) motion for relief from judgment is **DENIED**.

IT IS SO ORDERED this 18th day of February, 2016.

/s/
JOSEPH N. CAMACHO
Associate Judge

[9] In fact, Tano's letter to Mr. White misstates the deadline to answer, and Tano through Mr. Bracken then attempted to answer the summons by delivering this letter to Mr. White's law office.