

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

JONATHAN BRUCE, :  
Plaintiff :  
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 :  
v. : 3:03-CV-1340 (EBB)  
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COMMUNITY RENEWAL TEAM, INC. :  
and PAUL PUZZO, :  
Defendants :

**RULING ON MOTION FOR RELIEF FROM JUDGMENT**

Plaintiff Jonathan Bruce ("Plaintiff"), has moved for relief from the judgment entered against him on October 1, 2004, for failure to object to Defendants' Motion to Dismiss, filed in this court on June 3, 2004. His Motion is brought pursuant to Rule 60(b)(1) and (b)(6) of the Federal Rules of Civil Procedure, which provides in pertinent part:

On motion and upon such terms as are just, the court may relieve a party . . . from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect . . . or (6) any other reason justifying relief from the operation of the judgment.

The present case was filed in this Court on August 4, 2003. On December 30, 2003, Defendants moved to dismiss the action, asserting, *inter alia*, insufficiency of service of process, as no summons had been served on the Defendants and over 120 days had lapsed since the filing of the Complaint.<sup>1/</sup> See Fed.R.Civ.P.4(m).

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<sup>1/</sup> On January 8, 2004, Plaintiff incorrectly filed a Notice of Return of Service, stating that the Defendants had been served by summons and complaint.

On January 8, 2004, Plaintiff moved for an extension of time, to January 22, 2004, to file his objection to the Motion to Dismiss. The extension of time was granted on January 12, 2004.

On January 22, 2004, Plaintiff's counsel, realizing that she, in fact, had not perfected service, filed a Motion to Enlarge Time for Service of Summons and Complaint Beyond 120 Days. In that Motion, she claimed excusable neglect due to the fact that she had assumed that the Defendants would waive service, and when they refused to do so, she failed to serve them properly. The Motion was granted by this Court on February 19, 2004.

The original Motion to Dismiss was denied for failure to submit a memorandum of law in support thereof. After Defendants had been properly served, on or about March 19, 2004 (which return of service was not filed with the court for almost three more weeks), Defendants promptly filed a second Motion to Dismiss, dated April 30, 2004.

The second Motion to Dismiss was granted on September 30, 2004, absent objection thereto. Judgment in Defendants' favor was entered on October 1, 2004.

Three months and two days later, on January 3, 2005, Plaintiff filed the present Motion. His counsel asserts that "[t]his motion was inadvertently missed as the response date was not calendared due primarily to the loss of three staff members

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Such was incorrect, because no summons had ever been served and Defendants refused to waive same.

and the fact counsel was inundated with a large volume of appellate work within the firm during the time period within which Plaintiff's opposition/objection would have come due." <sup>2/</sup>

Since Rule 60(b) allows extraordinary judicial relief, it is invoked only upon a showing of exceptional circumstances.

Nemaizer v. Baker, 793 F.2d 58, 61 (2d Cir.1986). Relief from counsel's error, as we have here, is normally sought pursuant to Rule 60(b)(1) on the theory that such error constitutes mistake, inadvertence, or excusable neglect. However, the Second Circuit has consistently declined to relieve a client under subsection (1) of the "burdens of a final judgment entered against him due to the mistake or omission of his attorney by reason of the latter's ignorance of the law or other rules of court, or [her] inability to effectively manage [her] caseload." United States v. Cirami, 535 F.2d 736, 739 (2d Cir.1976)(no 60(b)(1) relief from unopposed summary judgment); United States v. Endross, 440 F.2d 1221 (2d Cir.), *cert den'd sub nom. Horvath v. United States*, 404 U.S. 849 (1971)(no 60(b)(1) relief from proposed judgment never responded to); Schwartz v. United States, 384 F.2d 833 (2d Cir.1967)(no relief from dismissal for failure to prosecute under 60(b)(1)). "This is because a person who selects counsel cannot thereafter avoid the consequences of the agent's acts or omissions." Link v. Wabash Railroad Co., 370 U.S. 626,

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<sup>2/</sup> On both June 28 and August 26, 2004, Plaintiff's counsel moved for extensions of time in which to respond to discovery, as necessitated by "brief preparation in defense of four separate appellate matters."

633-34 (1962).

In the present case, Plaintiff's counsel's appellate defense preparation was clearly too burdensome for her to have willingly taken on a new civil action. Her difficulties commenced from the very beginning of the litigation. They continue through this date, as demonstrated by the fact that it took her over three months to file the present motion. Nor will this Court hold legal staff, or the absence thereof, as responsible for the fact that counsel did not know when a timely response was due in this case. Even after receiving the ruling granting the Motion to Dismiss, absent objection, she filed no immediate Motion to Reconsider that decision. Rather, missing the ten-day time limitation on that filing, she now attempts to have the Court reconsider under the guise of a belated Rule 60(a)(1) Motion. The Court declines to do so.

Inasmuch as there exists no "other reason justifying relief from the operation of the judgment", Fed.R.Civ.P. 60(b)(6), the Plaintiff's Motion For Relief From Judgment Pursuant to Fed.R.Civ.P.(60)(b)(1) [Doc. No. 28] is hereby DENIED.

SO ORDERED

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ELLEN BREE BURNS

SENIOR UNITED STATES DISTRICT JUDGE

Date at New Haven, Connecticut this \_\_\_\_ day of January, 2005.