

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

United States of America :
 :
v. :
 :
 :
Claudio and Nelida Cejas, :
d/b/a/ Nino's Grocery :

3:03cv1720 (JBA)

Ruling on Motion to Set Aside Default [Doc. # 21]

Default entered against defendants on February 2, 2004. On August 4, 2004, plaintiff moved for default judgment which was granted on October 18, 2004, and the case was closed.

Defendants' unopposed Motion to Set Aside Default, brought under Fed. R. Civ. P. 55(c), will be considered in accordance with Rule 60(b) because a judgment of default entered before defendant's motion was filed. Based on the explanation offered, defendants appear to move for relief from judgment under Rule 60(b)(1) for "mistake, inadvertence, surprise, or excusable neglect.

Rule 60(b)(1) provides, in relevant part, as follows:

(b) Mistakes; Inadvertence; Excusable Neglect; ... On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons:
(1) mistake, inadvertence, surprise, or excusable neglect;....

Fed.R.Civ.P. 60(b)(1). In considering a motion to vacate pursuant to Rule 60(b)(1) in the default judgment context, "courts have gone beyond the bare wording of the rule and established certain criteria which should be considered in deciding whether the

designated standards have been satisfied." Brien v. Kullman Industries, Inc., 71 F.3d 1073, 1077 (2d Cir. 1995). The three criteria followed in this circuit to determine whether to vacate a default judgment include: "(1) whether the default was willful; (2) whether defendant has a meritorious defense; and (3) the level of prejudice that may occur to the nondefaulting party if relief is granted." American Alliance Ins. Co., Ltd. v. Eagle Ins. Co., 92 F.3d 57, 59 (2d Cir.1996) (quoting Davis v. Musler, 713 F.2d 907, 915 (2d Cir.1983)).

Defendants have not satisfied this standard. In their memorandum, defendants state that after entry of default

[i]n approximately March of 2004, the defendants contacted Attorney Gabriel H. Cusanelli of New Haven, Ct, to assist them in negotiating a settlement to this matter. However, neither Attorney Cusanelli, nor the defendants filed an appearance or an answer to the complaint. In July of 2004, the negotiations failed to end in a settlement of the action.

Defendant's Memorandum in Support of Motion to Set Aside Default [Doc. # 21] at 1.

Although the standard for excusable neglect in a motion to vacate a default judgment is lenient, defendants do not claim that their failure to appear was due to inadvertence or mistake. Rather, defendants acknowledge that they were aware of the claim against them and had entered into unsuccessful settlement negotiations with the plaintiff. Defendants state that they made a good faith effort to retain counsel for a full appearance earlier in the procedural process of this case," but were "[u]nable to afford

counsel for that purpose," and "counsel assisted the defendants in the negotiations aimed at settlement of this case." Def. Mem. at 2. Although there is no bad faith apparent in the decision not to defend this suit in court, defendants acknowledge "a conscious decision" not to file an appearance or answer. U.S. v. Erdoss, 440 F.2d 1221 (2d Cir. 1971). In these circumstances, defendants' conduct must be deemed willful.

Further, as no proposed answer accompanies defendant's motion, the existence of a meritorious defense cannot be determined. Defendants acknowledge in their memorandum, however, that "a meritorious defense may seem doubtful from the face of the complaint." Def. Mem. at 2. The affidavit of U.S. Department of Agriculture Special Agent Angel Plaza, accompanying plaintiff's motion for default judgment, documented defendants' 32 fraudulent acts of trafficking in food stamps. See [Doc. # 17, Ex. A]. Defendants have provided no basis to find the plaintiff's claim less than meritorious.

Because the United States has not responded to this motion, it is not possible to assess the degree of prejudice it may experience if the default judgment is vacated. In light of the foregoing, however, the Court concludes that the default judgment should stand, in the absence of excusable neglect or a showing of a meritorious defense.

Defendants primarily seek to vacate the default judgment

because of the "harsh result" of the default judgment in the amount of \$193,203.14, which they state will lead to their "financial ruin." Def. Mem. at 3. They note that they wish to continue negotiations with the United States to settle this case. Nothing in the default judgment or in this ruling precludes such a settlement from taking place, and the Court encourages the parties to continue to negotiate a settlement satisfactory to both sides.

Accordingly, defendants' Motion to Set Aside Default [Doc. # 21] is DENIED.

IT IS SO ORDERED.

/s/

Janet Bond Arterton, U.S.D.J.

Dated at New Haven, Connecticut, this 3rd day of February, 2005.