

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

**WORLD WRESTLING
ENTERTAINMENT, INC.
Plaintiff,**

v.

**AUSBERT DE ARCE
Defendant.**

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No. 3:03CV1568 (DJS)

MEMORANDUM OF DECISION

_____ Defendant, Ausbert de Arce (“de Arce”), moves the court [**doc. #16**] to set aside the default judgment entered January 23, 2004 in favor of plaintiff World Wrestling Entertainment (“WWE”). De Arce has also motioned for a protective order against certain discovery requests of the WWE [**doc. #20**]. Plaintiff seeks to compel de Arce’s response to discovery [**doc. #23**] and also an extension of time to respond to de Arce’s motion to set aside the default [**doc. #22**].

The court entered judgment in favor of the WWE on January 23, 2004 due to de Arce’s failure to respond to the complaint within the prescribed time period after service. F.R.C.P. 12(a)(1)(A); F.R.C.P. 55(a). De Arce subsequently entered an appearance in this case and motioned to set aside the default judgment on the grounds that he was not in residence at the address where service was made, 530 East 76th Street, Apt. 31G, New York, NY. According to De Arce, he did not receive notice of the summons or the service of WWE’s complaint until February 2004, when his estranged son informed him that mail had been delivered to the New York apartment.

A default judgment may be set aside when the defaulted party can show that mistake,

inadvertence, surprise or excusable neglect led to the default. F.R.C.P. 60(b)(1). The excusable neglect standard is “construed generously” under this rule. American Alliance Insurance Co., Ltd. v. Eagle Insurance Co., 92 F.3d 57, 58 (2d.Cir. 1996). Courts consider three factors when ruling on a motion under F.R.C.P. 60(b)(1). First, whether the default was willful. Second, whether the defendant has a potentially meritorious defense to the plaintiff’s claims. Third, the courts will take into account the level of prejudice to the non-defaulting party if relief from the judgment is granted. American Alliance, 92 F.3d at 59.

The facts show that de Arce was not willful in his failure to respond, but rather defaulted as a result of excusable neglect. It is arguable that de Arce was negligent either in not having his mail forwarded to his current address or for failing to check his mail at the New York apartment. Negligence, however, is insufficient to deny vacatur of a default judgment. American Alliance, 92 F.3d at 61.

The evidence is also sufficient to show that de Arce potentially has a meritorious defense to the plaintiff’s claims. This action involves a contract dispute over licensing rights and fees. De Arce allegedly falsified a contract between the WWE and certain third parties that supercedes another contract negotiated by the WWE for rights to market WWE products in the Middle East and Asia. The defendant denies these claims and purports to have proof that he properly negotiated and authorized the allegedly fraudulent contract while he was employed by the WWE. There are clearly unresolved factual issues that could provide a valid defense to the WWE’s claims.

Finally, there is no basis for concluding that the WWE will be prejudiced if the default judgment is vacated. The delay entailed by de Arce’s neglect encompassed only a few months,

and the subject matter of the dispute—especially the allegedly fraudulent documents and the question of de Arce’s credibility—is no less fresh or available now than in December 2003 when WWE motioned for default. The court notes that WWE has failed to respond to de Arce’s motion to set aside the default. The plaintiff did file a motion seeking an unspecified extension of time to respond on the grounds that discovery was required before a proper response could be filed. The motion for an extension of time is denied. It is exclusively within the province of WWE to say whether the relief from default would prejudice its case, and no such claim has been raised. Further, WWE had sufficient facts at hand to argue either that de Arce’s conduct was not excusable or that he lacks a meritorious defense in this case, but chose not to make either claim.

WWE asserts that discovery was necessary to respond to de Arce’s claims, but the discovery requested can, and should, properly be conducted within the context of arriving at a resolution of the merits in this action. Further, the evidence available is consistent with de Arce’s claim and does not persuade the court that the interests of justice are served by permitting lengthy discovery on this motion. Indeed, the affidavits submitted by WWE shows that, arguably, the plaintiff knew that de Arce did not reside at the New York apartment as early as October 10, 2003. “Strong public policy favors resolving disputes on the merits,” American Alliance, 92 F.3d at 61, and this court will respect that policy. The motion to set aside the judgment is granted.

CONCLUSION

_____The motion to set aside the default judgment [**doc. #16**] is **GRANTED**. The motion for extension of time to respond to the motion to set aside the default [**doc. #22**] is **DENIED**. The motions to compel [**doc. #23**] and for a protective order [**doc. #20**] are **DENIED as moot**. The

default judgment entered January 23, 2004 is vacated. The Clerk of the Court is **ORDERED** to reopen the case.

IT IS SO ORDERED at Hartford, Connecticut on this 15th day of June, 2004.

/s/DJS

DOMINIC J. SQUATRITO
UNITED STATES DISTRICT JUDGE