

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

JOHN GUILLORY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	No. 3:03CV1105 (DJS)
	:	
BARRIEAU MOVING,	:	
	:	
Defendant,	:	
	:	
BARRIEAU MOVING,	:	
	:	
Counterclaim Plaintiff,	:	
	:	
v.	:	
	:	
JOHN GUILLORY,	:	
	:	
Counterclaim Defendant.	:	

ORDER

This is an action by John Guillory against Barrieau Moving to recover damages for conversion of his personal property and damages resulting from unfair trade practices. Barrieau Moving removed this action to this court because construction of its contract with Guillory is governed by certain provisions of the Interstate Commerce Act. Barrieau Moving has filed a counterclaim against Guillory to recover the balance due on an invoice for services rendered.

This action is currently closed. Barrieau Moving moved for security of costs, and Guillory failed to post the required bond or move that he be excused from doing so. Guillory also failed

to submit an answer to Barrieau Moving's counterclaim. Therefore, on September 25, 2003, his complaint was dismissed under Rule 41 of the Federal Rules of Civil Procedure and default was entered against him with respect to Barrieau Moving's counterclaim pursuant to Rule 55 of the Federal Rules of Civil Procedure. (See Dkt. # 13). On October 31, 2003, the court entered a default judgment in favor of Barrieau Moving for damages in the total amount of \$10,834.65, and for costs in the amount of \$150.00, for a total of \$10,984.65.

Guillory now moves to vacate the dismissal of his complaint and the default judgment entered against him. Guillory's motion is governed by Rule 55(c) of the Federal Rules of Civil Procedure, which, when a default judgment has been entered, references Rule 60(b). "The dispositions of motions for entries of defaults and default judgments and relief from the same under Rule 55(c) are left to the sound discretion of a district court because it is in the best position to assess the individual circumstances of a given case and to evaluate the credibility and good faith of the parties." Enron Oil Corp. v. Diakuhara, 10 F.3d 90, 95 (2d Cir. 1993). "It is the responsibility of the trial court to maintain a balance between clearing its calendar and affording litigants a reasonable chance to be heard." Id. at 96. Specifically, when considering whether to set aside a default judgment, the court considers three factors: "(1) whether

the default was willful; (2) whether setting aside the default would prejudice the adversary; and (3) whether a meritorious defense is presented." Id. The Court of Appeals has instructed that, "when doubt exists as to whether a default should be granted or vacated, the doubt should be resolved in favor of the defaulting party. In other words, 'good cause' and the criteria of the Rule 60(b) set aside should be construed generously." Id.

Guillory's motion to reopen is granted. On April 29, 2004, Guillory filed an answer to Barrieau Moving's counterclaim and also posted a \$500.00 security bond. Guillory claims that his attorney did not diligently prosecute this matter, and that his attorney failed to advise him of the status of this case. Guillory, now acting pro se, has cured the defects that led to the entry of a default judgment. Thus, the court concludes that his initial default was not willful. Also, the court finds that Barrieau Moving will not suffer undue prejudice should the default judgment be set aside. With respect to the third factor, whether Guillory has a valid defense, the court is not in a position to judge the strength of Guillory's claims because he has not been able to present any argument to this court as of this time. However, given the fact that his default was apparently caused by his prior attorney's failure to act, the most equitable resolution of this motion is to allow Guillory to proceed with new counsel, as he has requested.

Guillory has also moved to change venue to the Middle District of Florida. Under 28 U.S.C. § 1391(b), venue is proper in the District of Connecticut. Guillory seeks to change venue under 28 U.S.C. § 1404, which provides that “[f]or the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought.” 28 U.S.C. § 1404(a). “The idea behind s 1404(a) is that where a ‘civil action’ to vindicate a wrong--however brought in a court--presents issues and requires witnesses that make one District Court more convenient than another, the trial judge can, after findings, transfer the whole action to the more convenient court.” Continental Grain Co. v. The FBL-585, 364 U.S. 19, 26 (1960). Prior to determining whether a transfer is appropriate pursuant to Section 1404, certain conditions must be met. The phrase “where it might have been brought” has been interpreted to mean that, in order to transfer a case to another district pursuant to Section 1404, the transferee court must have subject matter jurisdiction, the plaintiffs must have been able to have originally brought the case in the transferee district under the applicable venue statute, and the plaintiffs must have been able to acquire personal jurisdiction over each defendant in the transferee district. See Hoffman v. Blaski, 363 U.S. 335, 343-45 (1960).

Although the court appreciates Guillory's arguments that he and his mother both reside in Florida, a change of venue at this time is not warranted because the court cannot determine whether Barrieau Moving would be subject to personal jurisdiction in the Middle District of Florida, which is a prerequisite to any transfer pursuant to Section 1404(a).

Therefore, the court orders the following:

1. Guillory's motion to reopen (dkt. # 25) is **GRANTED**; the dismissal of Guillory's complaint (dkt. # 13) and the default judgment against Guillory entered on October 31, 2003 (dkt. # 16) are **VACATED**. The Clerk of the Court shall re-open this case.

2. Guillory's motion to change venue (dkt. # 26) is **DENIED**.

3. The parties shall submit a report of their planning meeting on or before **July 23, 2004**.

So ordered this 21st day of June, 2004.

/s/DJS

DOMINIC J. SQUATRITO
UNITED STATES DISTRICT JUDGE