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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re:)	
)	
KAREN CHRISTIANSEN,)	Case No. 05-20050-B-7
)	
Debtor(s).)	
)	
_____)	
)	
VERN WEBER,)	
)	
Plaintiff(s))	Adv. No. 05-2152-B
)	
vs.)	
)	
KAREN CHRISTIANSEN,)	Docket Control No. WKB-2
)	
Defendant(s).)	Date: December 12, 2006
)	
_____)	Time: 9:30 a.m.

On or after the calendar set forth above, the court issued the following ruling. The official record of the ruling is appended to the minutes of the hearing.

Because the ruling constitutes a "reasoned explanation" of the court's decision under the E-Government Act of 2002 (the "Act"), a copy of the ruling is hereby posted on the court's Internet site, www.caeb.uscourts.gov, in a text-searchable format, as required by the Act. However, this posting does not constitute the official record, which is always the ruling appended to the minutes of the hearing.

DISPOSITION AFTER ORAL ARGUMENT

This matter came on for initial hearing on October 24, 2006. The court requested further briefing in a companion matter in Adversary Proceeding 05-2187 and to avoid inconsistent results, both matters continued to this date. The matter came on for

1 final hearing on December 12, 2006, at 9:30 a.m. Appearances are
2 noted on the record. The following constitutes the court's
3 findings of fact and conclusions of law, pursuant to Federal Rule
4 of Bankruptcy Procedure 7052.

5 The motion is denied.

6 Defendant and debtor Karen Christiansen ("Defendant") moves
7 to set aside the clerk's default and default judgment (the
8 "Judgment") entered against her in this adversary proceeding and
9 to reinstate her answer. As an initial matter, the court notes
10 that counsel for movant admitted at the October 24, 2006 hearing
11 that the fee agreement between Defendant and her counsel in the
12 Bankruptcy Case excluded adversary proceedings from the scope of
13 representation. The court therefore deems the allegations of
14 abandonment by prior counsel to be abandoned by Defendant.
15 Defendant moves pursuant to Federal Rule of Bankruptcy Procedure
16 9024 incorporating Federal Rule of Civil Procedure 60(b)(1) which
17 provides in relevant part:

18 On motion and upon such terms as are just, the court
19 may relieve a party or a party's legal
20 representative from a final judgment, order or
21 proceeding for the following reasons: (1) mistake,
22 inadvertence, surprise, or excusable neglect;...
The motion shall be made within a reasonable time,
and for reasons (1), (2), and (3) not more than one
year after the judgment, order or proceeding was
entered or taken...."

23 (West 2005). A condition precedent for relief under any of
24 the sub-parts of Rule 60(b) is that the motion be made within a
25 reasonable time. This motion was not made within a reasonable
26 time. Contrary to the position taken by Defendant in the motion,
27

1 the fact that this motion was filed on the 364th day after entry
2 of the judgment against her does not insulate her from inquiry
3 into reasonableness of the time. The 1 year limit is a
4 requirement that is separate and in addition to the requirement
5 that the time be reasonable. 12 MOORE'S FEDERAL PRACTICE,
6 §60.65[2][b] (15th ed. Rev. 2006); Meadows v. Dominican Republic,
7 817 F.2d 517, 520-21 (9th Cir. 1987); Kagen v. Caterpillar
8 Tractor Co., 795 F.2d 601, 610-11 (7th Cir. 1986); White v.
9 American Airlines, Inc., 915 F.2d 1414, 1425 (10th Cir. 1990).
10 Defendant received the default pleadings and judgment at or
11 around the time of her mother's death in September 2005. Most of
12 the Bankruptcy Abuse Prevention and Consumer Protection Act of
13 2005 ("BAPCPA") went into effect October 17, 2005. Assuming that
14 qualified attorneys were catching up on work deferred during the
15 mass filings surrounding October 17, 2005, the debtor has
16 accounted for sufficient time to excuse delay through the end of
17 2005. This motion was filed almost six months after that and on
18 the last possible day to avoid the 1 year time limit. Defendant
19 alleges that she consulted with other lawyers before current
20 counsel but provides no evidence of how many other lawyers she
21 consulted or how long each took before declining to represent
22 Defendant. Defendant has failed to show her eleventh hour filing
23 was reasonable.

24 Even had the court found the motion to be filed within a
25 reasonable time, it still would be denied. Franchise Holding II,
26 LLC v. Huntington Rests. Group, Inc., 375 F.3d 922, 925-27 (9th
27 Cir. 2004) states the Ninth Circuit rule on motions to set aside

1 defaults and default judgments:

2 Rule 55(c) provides that a court may set aside a
3 default for "good cause shown."

4 * * *

5 The "good cause" standard that governs vacating an
6 entry of default under Rule 55(c) is the same
7 standard that governs vacating a default judgment
8 under Rule 60(b). See TCI Group Life Ins. Plan v.
9 Knoebber, 244 F.3d 691, 696 (9th Cir. 2001). The
10 good cause analysis considers three factors:

11 (1) whether [moving party] engaged in culpable
12 conduct that led to the default; (2) whether [moving
13 party] had a meritorious defense; or (3) whether
14 reopening the default judgment would prejudice [the
15 plaintiff]. See id. As these factors are
16 disjunctive, the district court was free to deny the
17 motion "if any of the three factors was true."
18 American Ass'n of Naturopathic Physicians v.
19 Hayhurst, 227 F.3d 1104, 1108 (9th Cir. 2000).

20 [Moving party] bore the burden of showing that any
21 of the these factors favored setting aside the
22 default.

23 In this instance, the court finds that plaintiff would be
24 significantly prejudiced were this motion granted. The court
25 acknowledges that all parties against whom a motion of this kind
26 is brought will suffer some prejudice if the motion is granted.
27 The facts of this case go beyond the typical. Subsequent to
28 entry of the Judgment, which denied debtor a discharge under 11
U.S.C. § 727, plaintiff Verb Weber has made substantial efforts
to collect the debt owed to him. He successfully sued in state
court and obtained a judgment and a writ of execution. He made
attempts to garnish debtor's wages in collection on the debt. He
obtained recognition of the California state court judgment by
Nevada as a sister state judgment and has obtained "an execution

1 under that ... judgment." When this motion was filed, plaintiff
2 had pending in the superior court a motion to compel debtor's
3 responses to post-judgment interrogatories about her financial
4 records and alleged missing assets. All of the time and expense
5 expended by plaintiff in reliance on the Judgment would be put at
6 risk and possibly wasted were this motion to be granted.
7 Defendant has failed to show that plaintiff would not be
8 prejudiced if this motion is granted.

9 Because the court finds prejudice, it declines to reach the
10 other two possible reasons for denial enumerated in Franchise
11 Holding.

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