


ORDERED.

Dated: August 13, 2018


Cynthia C. Jackson
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION
www.flmb.uscourts.gov

In re:

Case No.: 6:17-bk-03940-CCJ
Chapter 7

Radu Guzun,

Debtor.

Navy Federal Credit Union,

Adv. Case. No. 6:17-ap-00111-CCJ

Plaintiff,

vs.

Radu Guzman,

Defendant.

**ORDER SETTING ASIDE DEFAULT
AND DENYING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT**

This adversary proceeding came before the Court to consider the Verified Motion by Defendant, Radu Guzun (the "Debtor") to Alter, Amend, Modify, Vacate and Set Aside Entry of Default and Default Judgment¹ (Doc. No. 14; the "Motion to Set Aside Default"), the Opposition to the Motion (Doc. No.19; the "Response") filed by Plaintiff, Navy Federal Credit Union, (the "Plaintiff"), and the Motion by Plaintiff for Default Judgment (Doc. No. 9; the "Motion for Default

Judgment”). For the reasons stated below, the Motion to Set Aside Default is granted and the Motion for Default Judgment is denied as moot.

The Plaintiff filed a complaint against the Debtor seeking a judgment determining that the amounts owed to Plaintiff (totaling over \$75,000) is nondischargeable, and that the Debtor should be denied a discharge. Over two months after serving the Debtor with the complaint, the Plaintiff requested a clerk’s entry of a default. The clerk entered the default on December 6, 2017 (Doc. No. 7; the “Default”). Over two months after entry of the Default, the Plaintiff filed the Motion for Default Judgment. Prior to the Court hearing the Motion for Default Judgment, the Debtor retained counsel, filed the Motion to Set Aside Default, and filed a verified answer to the complaint (Doc. No. 13).

By the Motion to Set Aside Default, the Debtor seeks to set aside the Default due to excusable neglect. The Plaintiff responds that the Debtor has not demonstrated excusable neglect as required by Rule 60(b) of the Federal Rules of Civil Procedure. Although both parties argue whether the more rigorous standard of excusable neglect has been met to set aside a default judgment, a default judgment has not been entered in this proceeding. Only the Default has been entered. And to set aside the Default, a less rigorous standard is used-- good cause.²

Rule 7055 of the Federal Rules of Bankruptcy Procedure, which incorporates Rule 55 of the Federal Rules of Civil Procedure, provides that the court may set aside the entry of a default for good cause.³ The good cause standard under Rule 55 is a liberal one and mutable, depending on the circumstances.⁴ Courts consider whether (1) there was excusable neglect; (2) the party responded promptly after entry of the default; (3) setting aside the default will not cause prejudice to the opposing party and (4) the defaulting party has a meritorious defense.⁵ But, “[e]ven where

there is uncertainty as to whether good cause exists, courts generally set aside the default so that the case may be decided on its merits.”⁶

In support of the Motion to Set Aside Default, the Debtor represents that he is a truck driver and regularly travels outside of Florida. When served with the complaint, the Debtor contacted his then counsel, Jose Lopez, with Lawyer ASAP. Mr. Lopez informed the Debtor that he would not represent him in the adversary proceeding. The Debtor contacted another law firm to represent him in this proceeding to no avail. When Debtor retained new counsel in March 2018, new counsel immediately contacted Plaintiff in an effort to resolve the adversary proceeding. About a month later, the Debtor filed the Motion to Set Aside Default and filed a verified answer to Plaintiff’s complaint that raises defenses, including a fraud perpetrated on the Debtor.

Having considered all the circumstances, including the Plaintiff’s delay in prosecuting this proceeding, the Debtor’s regular travel for employment purposes, the Debtor’s efforts to find counsel to represent him, and the Debtor’s verified answer that raises meritorious defenses, the Court finds that good cause exists to set aside the Default. The Court further finds that this proceeding should be decided on the merits given the magnitude a judgment of nondischargeability or denial of a discharge will have on the Debtor. With the Court setting aside the Default, the Motion for Default Judgment is rendered moot. Accordingly, it is

ORDERED:

1. The Motion to Set Aside Default (Doc. No. 14) is granted.
2. The Default (Doc. No. 7) is set aside.
3. The Motion for Default Judgment (Doc. No. 9) is denied as moot.

4. **A status conference is scheduled for October 11, 2018 at 11:00 a.m. in Courtroom 6D, 6th Floor, George C. Young Courthouse, 400 W. Washington St., Orlando FL 32801, before the Honorable Cynthia C. Jackson.**

Attorney Camy B Schwam-Wilcox is directed to serve a copy of this order on interested parties and file a proof of service within 3 days of entry of the order.

¹ Although the Motion refers to a default judgment, the Court has not entered a default judgment in this proceeding.

² See *EEOC v. Mike Smith Pontiac GMC, Inc.*, 896 F.2d 524, 528 (11th Cir.1990)(“The excusable neglect standard that courts apply in setting aside a default judgment is more rigorous than the good cause standard that is utilized in setting aside an entry of default.”)

³ Fed. R. Bankr. P. 7055(c).

⁴ See *Compania Interamericana Export-Import, S.A. v. Compania Dominicana de Aviacion*, 88 F.3d 948, 951 (11th Cir. 1996).

⁵ See *Radio Systems Corp. v. E.A. Distribution, Inc.*, 2018 WL 2017726 (M.D. Fla. May 1, 2018).

⁶ *Radio Systems Corp. v. E.A. Distribution, Inc.*, at *1 (internal quotations omitted)