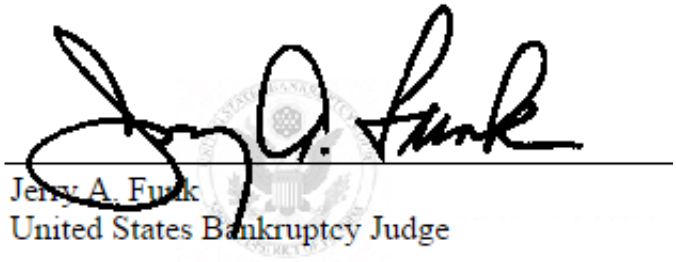
ORDERED.

Dated: July 31, 2019



Jerry A. Funk
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

IN RE:

TIFFANY RODRIGUEZ-MARTIN,

Debtor.
_____/

Chapter 7
Case No. 3:18-bk-1645-JAF

AARON R. COHEN, as Chapter 7 Trustee,

Plaintiff,
v.

TIFFANY RODRIGUEZ MARTIN,
DONALD GRANT MARTIN,
THE VANGUARD GROUP, INC.,
and W.W. GRAINGER, INC.,

Defendants.
_____/

Adv. Pro. No. 3:18-ap-0134-JAF

ORDER VACATING PRIOR ORDER, DATED JUNE 3, 2019, WHICH GRANTED TRUSTEE'S MOTION FOR DEFAULT JUDGMENT

This proceeding is before the Court on the Motion to Vacate (Doc. 42) the Court's prior order (Doc. 40) which granted the Trustee's motion for default judgment (Docs. 38 & 39). Defendant W.W. GRAINGER, INC. ("Grainger") filed the Motion to Vacate on June 20, 2019.

(Doc. 42). Plaintiff AARON R. COHEN, as Chapter 7 Trustee, (the "Trustee") filed a response. (Doc. 44). As discussed below, the Court grants the Motion to Vacate.

Background

In May 2018, Debtor TIFFANY RODRIGUEZ-MARTIN ("Debtor") filed a voluntary petition under Chapter 7 of the Bankruptcy Code. The Trustee filed this adversary proceeding in September 2018 and seeks turnover of estate property. Initially, the Trustee named three defendants: 1) Debtor; 2) Defendant DONALD GRANT MARTIN (the "Former Husband"); and 3) Defendant THE VANGUARD GROUP, INC. ("Vanguard"). The Trustee later amended the complaint to add Grainger as the fourth defendant. (Docs. 16 & 16-1).

The marriage between Debtor and the Former Husband was dissolved in May 2013. (Doc. 16-1 at 3). The dissolution order provided that Debtor would receive $26,736.35 from the Former Husband's employer-sponsored profit-sharing pension plan (the "Pension Funds"). This dissolution order is an "*un*qualified" domestic relations order. Grainger is the Former Husband's employer and Vanguard administers the pension plan as a third-party fiduciary. The plan is a "qualified" plan under the Employee Retirement Income Security Act ("ERISA"). (Doc. 16-1 at 4, ¶ 17). Vanguard "remains in possession of" the Pension Funds "at the direction of" Grainger. (Doc. 16-1 at 4, ¶ 14). The Pension Funds have not been distributed and no "qualified" domestic relations order has been entered by the marriage-dissolution court.

Debtor claimed the Pension Funds as exempt pursuant to § 222.21(2), Florida Statutes. However, in this proceeding, Debtor entered a consent judgment stating the funds are nonexempt property of the estate. (Doc. 3). The Former Husband disclaims any interest in the funds. The Trustee seeks turnover of the Pension Funds. Both Vanguard and Grainger contend that, pursuant 29 U.S.C. § 1056(d)(3), which is an exception to ERISA's anti-alienation provision, a "qualified"

domestic relations order must be rendered before the funds may be distributed by Vanguard. When the Trustee sought leave to add Grainger as a defendant, Vanguard objected and argued that naming Grainger would not obviate the need for a qualified domestic relations order. (Doc. 17).

Service of process was executed on Grainger on April 10, 2019. (Doc. 30). On May 20, 2019, the Trustee requested a clerk's default. (Doc. 32). The clerk's default was entered on May 21, 2019. (Doc. 33). On May 30, 2019, the Trustee filed the motion for default judgment. (Docs. 38 & 39). The Trustee's proposed order was granted on June 3, 2019 ("Order Granting Default Judgment"). (Doc. 40). As discussed below, the Order Granting Default Judgment is an interlocutory order granting, what is referred to as, "non-final default judgment."

Grainger's attorney attests that, after service of the amended complaint, Grainger tendered the case to Vanguard so that Vanguard and the Trustee could continue the process of obtaining a qualified domestic relations order. (Doc. 42 at 8). Upon learning of the clerk's default, Grainger's attorney "contacted [Trustee]'s counsel and attempted to engage in further settlement discussions pursuant to what Grainger understood was the parties' settlement framework." (Doc. 42 at 8).

Following the Order Granting Default Judgment, Grainger's attorney realized his "understanding of the framework agreed to [ ] was apparently inaccurate." The Trustee made clear that a qualified domestic relations order "is not an acceptable framework" for turnover of the Pension Funds. (Doc. 44 at 3). Neither Vanguard nor Grainger contends the Trustee is not entitled to the Pension Funds. Rather, they contend a "qualified" domestic relations order must be entered so that the exception to the pension plan's anti-alienation provision can be satisfied, as required by § 1056(d)(1)-(3).

Analysis

The Order Granting Default Judgment is not a final default judgment because it fails to resolve all claims against all parties, the Court has not certified the order as final under Federal Rule of Civil Procedure 54(b),[1] and the order fails to provide for any type of relief whatsoever.[2] Anheuser Busch, Inc. v. Philpot, 317 F.3d 1264, 1267 (11th Cir. 2003) ("The default judgement entered by the court against Philpot was not a final default judgment, as it provided neither relief nor damages."); Fed. R. Civ. P. 60(b). Thus, the proper standard is the "good cause" standard for setting aside a clerk's default pursuant to Rule 55(c). Philpot, 317 F.3d at 1267.

"'Good cause is a mutable standard, varying from situation to situation,' but factors for courts to consider include 'whether the default was culpable or willful, whether setting it aside would prejudice the adversary, and whether the defaulting party presents a meritorious defense,' as well as 'whether the defaulting party acted promptly to correct the default.'" Geiger v. Sangha Hosp., 2017 WL 6063073, at *1 (M.D. Ga. Dec. 7, 2017) (quoting Compania Interamericana Export-Import, S.A. v. Compania Dominicana de Aviacion, 88 F.3d 948, 951 (11th Cir. 1996)).

Here, Grainger's attorney believed Vanguard was working with the Trustee and that there was no need to answer the amended complaint. While Grainger's failure to answer was extremely imprudent, the failure was not culpable. It is reasonable that Vanguard would take the lead since it possesses the Pension Funds and retains fiduciary responsibilities over them.

Setting aside the default would not prejudice the Trustee. The central issue is whether the Pension Funds can be distributed in the absence of a qualified domestic relations order. Even if the Court allows the default to stand, the effect of the anti-alienation provision must still be

[1] Rule 54(b) allows for the certification of finality of an order that disposes of one or more, but fewer than all, claims or parties. Fed. R. Civ. P. 54(b).

[2] Case law sometimes refers to these orders as a "non-final default judgment."

resolved. A default against Grainger will not sidestep this legal issue. Perez v. Wells Fargo N.A., 774 F.3d 1329, 1339 (11th Cir. 2014) ("Although a defaulted defendant is deemed to have admitted the movant's well-pleaded allegations of fact, [the defendant] is not charged with having admitted . . . conclusions of law."). Therefore, the Trustee is not prejudiced by setting aside the default.

As to whether Grainger acted promptly, Grainger's attorney was in communication with the Trustee's attorney since entry of the clerk's default. This communication and the brief time between the clerk's default and the motion to vacate does not demonstrate dilatory practices.

As to Grainger's meritorious defense, the Court is hesitant to address this factor because the Trustee has not properly addressed the anti-alienation issue. In re Remia addresses a similar fact-pattern.[3] 503 B.R. 6 (Bankr. D. Mass. 2013). Further, the Supreme Court has held that the anti-alienation provision in § 1056(d)(1) is "enforceable" in bankruptcy, under 11 U.S.C. § 541(c)(2). Patterson v. Shumate, 504 U.S. 753, 760 (1992). Shumate, Remia, and the plain language of 29 U.S.C. § 1056(d) appear to support Vanguard and Grainger's argument.

The Court recognizes the Trustee's argument that the absence of a qualified domestic relations order (as of the petition date) means Debtor was not an "alternate payee" of the pension plan for purposes of the exemption under § 222.21(2)(d), Florida Statutes. However, it plainly appears that a post-petition qualified domestic relations order is required before the plan administrator may distribute the funds to someone who is not a plan "participant" or "beneficiary."

Having said that, the Court will not decide dispositive legal issues, now. Rather, the Court determines the default should be set aside because even a *final* judgment against Grainger would have no practical effect on this proceeding and would not bring resolution any closer. The parties

[3] Remia applied the property exemption found in 11 U.S.C. § 522(d)(12) rather than § 222.21(2), Florida Statutes. Remia's analysis concerning ERISA, however, remains instructive. See also In re West, 507 B.R. 252, 257 n.1 (Bankr. N.D. Ill. 2014).

should attempt to determine the proper course necessitated by ERISA and the pension plan itself. If there is a bona fide dispute as to Vanguard's legal and fiduciary duties regarding turnover, the Trustee should squarely raise the issue in a summary-judgment motion and explain why 29 U.S.C. § 1056(d) is inapplicable to this pension plan.

Accordingly, it is hereby ORDERED as follows:

1) Grainger's Motion to Vacate (Doc. 42) is GRANTED.

2) The default (Doc. 33) entered against Grainger is SET ASIDE.

3) The Order Granting Default Judgement (Doc. 40) is VACATED.