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United States District Court,
C.D. California.

UNITED STATES of America
v.
$4,656,085.10 IN BANK FUNDS.

No. SACV 12–0219–DOC (JPRx).
|
Jan. 27, 2014.

Attorneys and Law Firms

Frank D. Kortum, Office Of US Attorney, Los Angeles, CA, for United States of America.

PROCEEDINGS (IN CHAMBERS): ORDER DENYING MOTION TO SET ASIDE DEFAULT JUDGMENT [46][47]

Honorable DAVID O. CARTER, District Judge.

***1** Julie Barrera, Courtroom Clerk.

Before the Court are Claimant Michael Brander and Evergreen Capital LLC's (together, "Defaulted Claimants' ") Motions to Set Aside Default Judgment of Forfeiture ("Motion" or "Mot.") (Dkts.46, 47). After considering the moving papers, opposition, and reply, and all filings attached thereto, the Court hereby DENIES the Motion.

I. BACKGROUND

Claimant Michael Brander ("Mr.Brander") was getting divorced from his wife, Sheila Brander. Compl. ¶ 8. In May 2008, during the course of divorce proceedings, Mr. Brander drove from Alaska to Panama with several cashier's checks that totaled approximately $3,250,000, opened an account in the name of Dakota Investment, and deposited checks into the account. *Id.* The Government contends, and Mr. Brander admits, that his purpose in moving the funds to Panama was to conceal them from his wife. *Id.;* Mot. at 1–2.

Mr. Brandner also failed to file a Report of Foreign Bank and Financial Accounts ("FBAR") with the Internal Revenue Service. Compl. ¶ 9. Mr. Brandner was allegedly told that he was required to file a FBAR, but he failed to do so. *Id.* Over the next few years, Mr. Brander shifted a total of $4,656,085.10 to his account in Panama, including through wire transfers.

On September 12, 2011, the Government seized the funds. On February 9, 2012, the Government filed a Complaint for forfeiture against the funds, alleging that they were subject to forfeiture as proceeds of wire fraud because they were involved in one or more money laundering transactions, and because Mr. Brander failed to file a FBAR. *Id.* at 13.

Mr. Brandner admits that he was "served copies of the Verified Complaint for Forfeiture in this case in February, 2012." Brandner Decl. ¶ 5. He explains that "his attorney at the time" advised him that he should not respond to the Complaint because his doing so "would increase the chances of federal criminal charges

being filed against him." Mot. at 3; Brandner Decl. ¶ 5.

On June 4, 2012, the Clerk of the Court entered default against Defaulted Claimants. Default by Clerk (Dkt.13). On July 18, 2012, this Court entered default judgment against Defaulted Claimants. Order, July 18, 2012 (Dkt.23).

Now, Mr. Brandner moves the Court to set aside the default judgment. *See generally* Mot.

II. DISCUSSION

Under Federal Rule of Civil Procedure 60(b)(1), district courts have the discretion to relieve a party from a judgment or order for reason of "mistake, inadvertence, surprise, or excusable neglect." *TCI Group Life Ins. Plan v. Knoebber,* 244 F.3d 691, 695 (9th Cir.2001). The Ninth Circuit has admonished district courts that, as a general matter, Rule 60(b) is "remedial in nature and ... must be liberally applied." *Falk v. Allen,* 739 F.2d 461, 463 (9th Cir.1984) (per curiam). But, "[t]his does not mean, of course, that the moving party is absolved from the burden of demonstrating that, in a particular case, the interest in deciding the case on the merits should prevail over the very important interest in the finality of judgments." *TCI Group,* 244 F.3d at 696. There must still be "good cause" for vacating default judgments. *Id.* Good cause is absent when: the defendant's culpable conduct led to the default; the defendant has a meritorious defense; or reopening the default judgment would prejudice the plaintiff. *Id.* These three factors are disjunctive, and the district court may deny the motion "if any of the three factors was true." *Franchise Holding II, LLC v. Huntington Rests. Group, Inc.,* 375 F.3d 922, 926 (9th Cir.2004) (quoting *Am. Ass'n of Naturopathic Physicians v. Hayhurst,* 227 F.3d 1104, 1108 (9th Cir.2000)).

***2** Defaulted Claimants explain that, "the primary reason that [they] did not file a claim and Answer to the forfeiture Complaint was that [they] w[ere] advised by [their] then attorney not to do so ." Mot. at 3. In addition, "[Mr. Brandner] was advised by his doctors to attempt to limit his stress." *Id.* The Government argues that this conduct is, in fact, culpable. Opp'n at 6–7; Sur–Reply at 2–3. The Court agrees.

"[A] defendant's conduct is culpable if he has received actual or constructive notice of the filing of the action and *intentionally* failed to answer." *TCI Group,* 244 F.3d at 697 (citing *Alan Neuman Prods. v. Albright,* 862 F.2d 1388, 1392 (9th Cir.1988)). In other words, a defaulted claimant's conduct was culpable "where there is no explanation of the default inconsistent with a devious, deliberate, willful, or bad faith failure to respond." *TCI Group,* 244 F.3d at 698 (citations omitted).

Here, Defaulted Claimants admit that they made an intentional decision not to respond. Brandner Decl. ¶ 5. Indeed, they consulted their lawyer. This is not a case where, like in *Hayworth v. Haddock,* No. 06–CV–1713, 2008 U.S. Dist. LEXIS 104171, at *8–9 (E.D.Cal. Dec. 15, 2008), defendants lacked actual or constructive notice of the action. Rather, Defaulted Claimants made a considered decision-albeit, perhaps, a bad one-with the advice of an attorney. Unfortunately, this type of prudential mistake is not enough to relieve Defaulted Claimants of the default judgment

against them. *See Franchise Holdings,* 375 F.3d at 926 ("If a defendant has received actual or constructive notice of the filing of the action and failed to answer, its conduct is culpable.").

Therefore, the Court finds that Defaulted Claimants were culpable in their failure to respond to the Complaint.

III. DISPOSITION

For the reasons explained above, the Court hereby DENIES Defaulted Claimant's Motions to Set Aside Default Judgment.

The Clerk shall serve this minute order on the parties.

All Citations

Not Reported in F.Supp.2d, 2014 WL 552864

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