

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2025-029914

05/29/2026

HONORABLE ADDISON OWEN

CLERK OF THE COURT
L. Palmert
Deputy

PALOMA PASEO HOMEOWNERS
ASSOCIATION INC

EMILY ELIZABETH COOPER

v.

JOHN PRIEVE

LEVI T CLARIDGE

COMM. OWEN

RULING

Before this Court is Defendant John Prieve's *Motion to Set Aside Default* filed on January 27, 2026, Plaintiff Paloma Paseo Homeowners Association Inc.'s *Response* filed February 17, 2026, and Defendant John Prieve's *Reply* filed February 20, 2026. The Court heard oral arguments on March 30, 2026. The Court has considered the filings and arguments of the parties, the relevant authorities and applicable law, as well as the entire record of the case, and hereby finds as follows.

I. PROCEDURAL HISTORY.

On August 21, 2025, Paloma Paseo Homeowners Association, Inc. ("Plaintiffs") filed a complaint against John Prieve ("Defendant") for Breach of Contract seeking Injunctive Relief, Attorney's Fees and Costs.

On September 12, 2025, Defendant was personally served the Complaint and Order to Show Cause regarding a request for a permanent injunction.

On October 6, 2025, Plaintiff's filed an Application for Entry of Default. On October 29, 2025, Plaintiff filed a Motion to Enter Default Judgment.

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Plaintiff filed a Motion to Vacate Evidentiary Hearing and Request for Default Hearing on November 14, 2025. On January 22, 2026, Plaintiff filed another Motion requesting to set a Default Hearing.

On January 27, 2026, Defendant filed an Answer and the Motion to Set Aside before the Court.

II. ANALYSIS.

This Court will consider whether default should be set aside under Rule 55(c) of the Arizona Rules of Civil Procedure. The court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).” Ariz. R. Civ. P. 55(c). “The good cause necessary for setting aside or vacating entry of default is the same as that required for relief from a judgment by default.” *Richas v. Superior Court*, 133 Ariz. 512, 514 (1982). The moving party, therefore, must demonstrate” “(1) that it acted promptly in seeking relief from the entry of default; (2) that its failure to file a timely answer was due to either mistake, inadvertence, surprise or excusable neglect; and (3) that it had a meritorious defense.” *Id.* It is Defendants’ burden to establish all three requirements because of the Arizona Supreme Court’s use of the word “and.” “The law favors resolution on the merits and therefore resolves all doubts in favor of the moving party.” *Id.* (citing *Union Oil Co. of Cal. V. Hudson Oil Co.*, 131 Ariz. 285 (1982)).

The test of what is excusable and, hence, sufficient to set aside a default judgment is whether the neglect or inadvertence is such as might be the act of a reasonably prudent person under similar circumstances. *Daou v. Harris*, 139 Ariz. 353 (1984); *State ex rel. Husky v. Oaks* 3 Ariz.App. 174 (1966); *Gray v. Dillon*, 97 Ariz. 16 (1964). Carelessness is not synonymous with ‘excusable neglect’ as a basis for setting aside a default judgment. *Thomas v. Goettl Bros. Metal Products, Inc.*, 76 Ariz. 54 (1953).

Defendant offers a single argument in support of their request for a finding of mistake, inadvertence, surprise, or excusable neglect – that Defendant was actively engaged in negotiations and filed the Motion to Set Aside only after the parties reached an impasse. No additional supporting facts are presented. Plaintiff, on the other hand, provides several email exchanges, including an email dated October 29, 2025, between Plaintiff and Defendant’s counsel. In this email, Plaintiff’s counsel sends documents, including the Application for Default, to Defendant’s counsel. Later that same day, Defendant’s counsel responded, “He’ll file the answer tomorrow. Thanks.” No further action was taken until the Motion to Set Aside was filed months later. This exchange demonstrates awareness of the deadline and the need to file an answer – even in the midst of negotiations. Further, communication continued into November preparing for the Order to Show Cause hearing related to the permanent injunction which is

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similar to the relief sought in the Complaint. The Court finds Defendant's failure to act was not due to mistake, inadvertence, surprise, or excusable neglect. Because all elements must be satisfied, the absence of any single element is fatal to the motion.

The Court also notes Defendant failed to present argument or evidence showing that they acted promptly, and this email exchange undermines that assertion as well.

With respect to the requirement of a meritorious defense, the Court has not analyzed the sufficiency of Defendant's showing because the first two elements have not been satisfied.

III. CONCLUSION.

Because Defendant has failed to meet his burden,

IT IS ORDERED that the Motion to Set Aside is denied.

/ s / ADDISON OWEN
HONORABLE ADDISON OWEN
JUDICIAL OFFICER OF THE SUPERIOR COURT