Clerk of the Superior Court
*** Electronically Filed ***
07/16/2025 8:00 AM

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2024-030637 07/15/2025

HONORABLE MARY C. CRONIN

CLERK OF THE COURT
K. Cabral
Deputy

STEFANIE HOWELL, et al.

TIMOTHY M COLLIER

v.

918 CONSTRUCTIONS L L C

ANGELA M WILSON-GOODMAN

JPMORGAN CHASE BANK N A
RCO CENTRALIZED MAIL CODE LA4-7200
700 KANSAS LN
MONROE LA 71203-4774
COMM. CRONIN

MINUTE ENTRY

The Court has reviewed the fully briefed Motion to Set Aside the Default Judgment entered in this matter on March 20, 2025. Defendant, 918 Construction, LLC, is requesting the Default Judgment be set aside pursuant to Rule 60(b)(1), 60(b)(3), 60(b)(4) and 60(b)(6). Defendant's argument for setting aside the Default Judgment is centered around the fact that the caption of the Complaint identified the Defendant as 918 Constructions, LLC. Defendant argues the addition of the "s" to construction in the caption of the Complaint renders the judgment void. The Court disagrees.

Defendant's argument ignores the fact that in the body of the Complaint, the Defendant was identified as 918 Construction, LLC. (Page 1, line 23 and Page 2 lines 3-4.) The Caption does not control the substantive content of the Complaint. The substantive language of the Complaint identified the Defendant without the "s" added to construction. Furthermore, the Summons, the Certificate of Compulsory Arbitration, and the Civil Cover Sheet identified Defendant without the "s" added to construction. All these documents were served on the statutory agent and sole member of 918 Construction, LLC, Mark Groff.

Defendant does not argue that the addition of the "s" in the caption prevented the statutory agent from being served. Defendant does not argue that the addition of the "s" to construction in the caption of the Complaint misled or prejudiced the Defendant. Rather, the Defendant argues Plaintiff should have sought leave to amend the caption and the Court's decision to allow the Plaintiff to amend the caption at the conclusion of the March 19, 2025, hearing on damages was highly improper and denied Defendant his due process rights. At the March 19, 2025, hearing, it was clearly established that Groff had notice of the lawsuit and was properly served at the Elmwood St. address which is listed on the Arizona Corporation Commission website. Groff stated at the hearing that he was the sole owner and statutory agent. He admitted he had received everything. At the conclusion of the hearing, the Court invited the Plaintiff to correct the caption by deleting the "s" added to construction since the Default Judgment needed several substantive changes.

Rule 60(b)(1)

The standard for setting aside a default judgment pursuant to Rule 60(b)(1) is Defendants must:

1) Move promptly to have the Judgment set aside,
2) Show the failure to defend was the result of excusable neglect; and,
3) Establish a meritorious defense to the claims. *Id.*

In determining whether relief is appropriate, the court must consider the "totality of (presented) facts and circumstances". *Amanti Elec., Inc. v. Engineered Structures, Inc.*, 229 Ariz. 430, 276 P.2d 499 (Ct. App. Div. 2, 2012). Here, Defendant has not established excusable neglect or that there is a meritorious defense.

For the conduct to be found excusable, Defendant must prove that the failure to timely respond to the Summons and Complaint and then the failure to respond to the Application for Entry of Default was the conduct of a reasonably prudent person. The Defendants are required to provide more than unsupported explanations that lack specificity, and an affidavit or testimony in support of their position "must allege facts sufficient to establish what occurred and explain why it should be found excusable". *Richas v. Superior Crt. of Arizona in and for Maricopa Cty*, 133 Ariz. 512,514, 652 P.2d 1037,1038 (1982). Defendant has not done this.

Groff claims after being served with the Complaint and all the accompanying documents, he consulted an "attorney" who advised him that because 918 Construction, LLC has an additional "s" in the caption of the Complaint, Groff was under no obligation to respond to the Complaint. Defendant argues this is the reason he did not respond after being properly served with the Complaint and the accompanying documents. Despite Plaintiff's request, the identity of this "attorney" has never been disclosed. This conclusory and unsubstantiated allegation does not

satisfy the requirements for establishing excusable neglect. Defendant's reliance on the unpublished decision, Williams v. Peralta, No. 1 CA-CV 22-0279, 2023 WL 2028226 (Ariz. Ct. App. Feb. 16, 2023) to support their argument that bad advice from an attorney may constitute excusable neglect is misplaced. In this case, Williams attempted to argue on appeal that an attorney's bad advice **is not** legally excusable. This argument was dismissed because Williams failed to raise this argument before the trial court, and this failure waived his right to raise the argument on appeal.

The statutory agent for the Defendant has admitted to service of the Complaint and then subsequently the Application for Entry of Default. In so far as Rule 55 (a) *Ariz. R. Civ. P.* gives a defaulting party an automatic second chance to avoid entry of default from becoming effective, the burden of establishing a basis for setting aside the default will be greater than prior to Rule 55 being amended. *General Elec. Capital Corp. v. Osterkamp*, 172 Ariz. 185, 836 P.2d 398 (Ct. App. Div. 2 1992). The ten (10) day grace period provided by Rule 55(a) makes it difficult for a party to justify the failure to respond was the result of excusable neglect. *Ruiz v. Lopez*, 225 Ariz. 217, 236 P.3d 444(Ct. App. Div. 1 2010) Defendant has provided no explanation whatsoever for failing to respond to the Application for Entry of Default. Groff makes no mention of contacting an attorney after receipt of the Application for Entry of Default. When Groff decided to make an appearance at the damages hearing on March 19, 2025, it was too late. Default against 918 Construction, LLC was entered on February 12, 2025. The only issue remaining for the March 19, 2025, hearing, was the amount of damages to be awarded to the Plaintiff. Groff was permitted to observe the hearing but was informed that he could not appear on behalf of an LLC, since he was not an attorney licensed to practice law in Arizona.

Defendant has also not met the third prong required by Rule 60(b)(1) which is the existence of a meritorious defense. Although the burden is not high, a defendant must do more than just state they have a meritorious defense. "A meritorious defense must be established by facts and cannot be established through conclusion, assumptions or affidavits based on other than personal knowledge". *Richas*, 133 Ariz. at 517, 652 P.2d at 1040. The Defendants argue the damages were excessive but provides no factual basis to support this claim. The second argument concerning a meritorious defense is Defendants' argument that the Registrar of Contractors has already investigated these complaints and dismissed them as unfounded. This misrepresents the position of the Arizona Registrar of Contractors. The letter states that after an investigation, it has been determined that the dispute is a contractual one. "The registrar does not have jurisdiction in such matters. Disputes such as this must be resolved in the appropriate civil venue as the Registrar lacks the authority to adjudicate contractual matters". (Exhibit B to Plaintiff's Response)

Rule 60(b)(3)

The Defendant argues that the Motion to Set Aside should be granted pursuant to Rule 60(b)(3) *Ariz.R.Civ.P.* because the Plaintiff should have amended the caption of the Complaint. There has been no evidence that the addition of the "s" to construction in the caption of the Complaint misled anyone. Especially since the "s" was not found in the body of the Complaint. At the damages hearing the Court found the addition of the "s" in the caption was a non-issue. The statutory agent was served with all the documents. The substantive language of these documents made it very clear who was being sued. A typo in the caption that is not included in the substantive body of the complaint is not the sort of fraud anticipated by Rule 60(b)(3) for setting aside a Default Judgment.

Rule 60(b)(4)

Defendants argue that they were not properly served with the Complaint as required by Rule 60(b)(4). The Statutory Agent was served as required by the Arizona Rules of Civil Procedure. In Arizona, there is a presumption of valid service that can only be impeached "by clear and convincing evidence," *General Elec. Capital Corp. V. Osterkamp (General Elec. II*), 172 Ariz. 191, 194, 836 P.2d 404, 407 (App. 1992). Defendants have failed to submit any evidence showing it "is highly probable or reasonably certain" that they were not served with the Summons and Complaint. In fact, Defendants' arguments show they were served with the Summons and Complaint because he allegedly asked an attorney about the documents, he received. Proper service is what gives the Court jurisdiction to hear the case. The case was heard, and the Default Judgment was entered. There is no evidence that the Default Judgment is void for lack of service.

Rule 60(b)(6)

Rule 60(b)(6) also does not merit setting aside default in this matter. Relief under this section of the rule is reserved for cases where none of the reasons for relief described in 1-5 of the Rule 60(b) are applicable, and the motion raises extraordinary circumstances of hardship or injustice. *Aloia v. Gore*, 252 Ariz. 548, 506 P.3d 34 (Ct. App. Div. 1 2022) Defendants fail to make any arguments in their Motion as to why setting aside the Default Judgment pursuant to Rule 60(b)(6) is warranted.

IT IS ORDERED the Motion to Set Aside the Default Judgment is denied.

Mary C. Cronin

MARY C. CRONIN
Commissioner
Arizona Superior Court, Maricopa County