

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2015-095361

07/31/2017

COMMISSIONER MARGARET BENNY

CLERK OF THE COURT

T. Nestor-Donohue

Deputy

VILLAGE AT GRAYHAWK OWNERS
ASSOCIATION

MARK W WALDRON

v.

DALE R GRABOIS, et al.

DALE R GRABOIS
19700 N 76TH ST # 2173
SCOTTSDALE AZ 85255

B M O HARRIS FINANCIAL
ADVISORS INC
NO ADDRESS ON RECORD
LAWYERS TITLE OF ARIZONA INC
NO ADDRESS ON RECORD
CITIZENS BANK OF PENNSYLVANIA
NO ADDRESS ON RECORD
CLERK OF THE SUPERIOR COURT
NO ADDRESS ON RECORD
GRAND CANYON TITLE AGENCY INC
NO ADDRESS ON RECORD

RULING

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The Court has received and reviewed Defendant Dale R. Grabois' Motion to Set Aside Sheriff's Notice of Sale of Real Property on Special Execution and Order of Sale; Plaintiff Village at Grayhawk Owners Association's Response, and Defendant's Reply. Defendant's argues that the judgment against him is void because he was not served.

Upon review and consideration,

THE COURT FINDS that the Defendant has failed to show the grounds necessary for the Court to set aside the judgment, which is needed to set aside the Notice of Sale and Order of Sale. Defendant must show that:

1. that there was excusable neglect or mistake by Defendant for his failure to answer;
2. that Defendant timely sought relief from judgment; and
3. that Defendant has a meritorious defense.

THE COURT FINDS that the judgment is valid and is not void.

THE COURT FURTHER FINDS that service upon Defendant Dale R. Grabois was properly completed, the Application for the Entry of Default was sent to the same address where Defendant was served and where Defendant still resides, and the Motion for Entry of Default Judgment was also sent to Defendant at the same address.

While Defendant states, without a supporting affidavit, that he did not receive the summons and complaint, the evidence shows otherwise. The motion for alternative service filed on November 24, 2015 attached a process server's affidavit of attempted attempts to serve Defendant Dale Grabois at his given address, the same address Defendant still gives as his current address. When an order for alternative service was granted on November 25, 2015, service was accomplished upon Defendant by posting the summons and complaint to the front door of the given address on November 28, 2015 and by sending the summons and complaint by certified mail to the same address on November 25, 2015. Defendant failed to sign for the certified mail and the unsigned receipt was returned to Plaintiff's counsel. Affidavits regarding the alternative service were provided to the Court. Defendant's failure to sign for the certified mail does not render the service incomplete or void. With the alternative method of service, the certified mail portion was completed with the mailing, not with the signing. The posting portion was completed when the documents were posted to the front of the residence.

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Next, the certificate of service of the Application for the Entry of Default indicates that the Application was mailed to Defendant by regular mail at the same address on December 30, 2015. The Motion for the Entry of Default Judgment, and the Affidavit for Attorneys' Fees were filed on March 10, 2016 and the certificates of service show the documents were also mailed to Defendant by regular mail to his same address. The default judgment was granted at a default hearing on March 28, 2016.

Defendant states that he was not "served" anything. Despite Defendant's unsworn statements, the documentation in the file suggests that Defendant was sent all of the documents as required in the manner required and he failed to answer as required. Defendant fails to give his definition of "served", but the Court permitted alternative service and after initial service of the summons and complaint was accomplished, the mailing of the subsequent Application for the Entry of Default and the Motion for Entry of Default Judgment by regular mail was appropriate pursuant to the Arizona Rules of Civil Procedure.

Defendant also alleges that the Court did not have his address as evidence that he was not served. However, the court record's lack of Defendant's address on the main page of the record does not mean what Defendant thinks it means. The Clerk of Court's Office will not list a defendant's address on the case record's main page in the electronic record system until the defendant actually makes an appearance--paying an answer fee (or obtaining a waiver or deferral of the answer fee) and filing a pleading, motion or response. The main case docket can still have evidence of his address in the pleadings and other documents in the system. The Clerk's office will not send minute entries or orders to a defendant until he makes an appearance or the judicial officer instructs the Clerk's Office to do so for a special reason. Additionally, once a defendant is defaulted, Plaintiff is not required to continue to send certain documents to the defendant.

Defendant has therefore failed to show excusable neglect on his part which caused his failure to timely answer.

Second, Defendant must timely seek relief from judgment. The judgment was filed on March 28, 2016. Defendant filed his Motion to Set Aside the Sheriff's Notice of Sale of Real Property on Special Execution and Order of Sale on May 1, 2017, over one year from the time of judgment. Defendant does not state when he learned of the judgment.

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Defendant has therefore failed to show that his motion was timely.

Third, Defendant must have a meritorious defense. Even if one of defenses Defendant claims in his motion was meritorious, Defendant must satisfy *all three* grounds to set aside the judgment.

THEREFORE, because Defendant has not shown all of the grounds needed to set aside the default judgment,

IT IS ORDERED denying the settling aside of the default judgment and also denying the Defendant's Motion to Set Aside the Sheriff's Notice of Sale of Real Property on Special Execution and Order of Sale.

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter/index.asp>