



IN THE DISTRICT COURT OF OKLAHOMA COUNTY
STATE OF OKLAHOMA

Oklahoma Department of Securities)
ex. rel. Irving L. Faught,)
Administrator)
)
Plaintiff,)
)
v.)
)
Joe Lawrence Gregory,)
Defendant.)

Case No. CJ-2018-4572

FILED IN DISTRICT COURT
OKLAHOMA COUNTY

NOV 26 2018

RICK WARREN
COURT CLERK

42 _____

**DEFENDANT'S REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANT'S
MOTION TO VACATE DEFAULT JUDGMENT AND BRIEF IN SUPPORT**

COMES NOW THE DEFENDANT, Joe Lawrence Gregory, ("Mr. Gregory"), by and through his attorney, M. Michael Arnett, and hereby enters his Reply to Plaintiff's Response to Defendant's Motion to Vacate Default Judgment, pursuant to 12 O.S. §1031(7). In reply, Mr. Gregory shows the Court as follows:

1. The first four pages of Plaintiff's Response once again recite the unsubstantiated allegations brought in the Plaintiff's Petition. Specifically, Plaintiff alleges that Mr. Gregory has defrauded more than ninety (90) investors in five (5) states out of more than Five Million Dollars (\$5,000,000).

2. Mr. Gregory was served with a Summons and copy of the Petition on September 15, 2018, and promptly hired the undersigned counsel. Under the procedural guidelines, Mr. Gregory's Response was due on October 5, 2018. Had Mr. Arnett timely filed an Entry of Appearance and Reservation of Time, Mr. Gregory's Answer would have been due on October 25, 2018.

3. Due to an internal docketing error, occurring as a result of recent staff changes at Mr. Arnett's office, the initial Answer date was missed and an Entry of Appearance and Answer

were filed on October 12, 2018. It should be noted that this is thirteen (13) days sooner than the date on which the Answer would have been due had Mr. Arnett's office timely filed an Entry of Appearance and Reservation of Time.

5. On October 9, 2018, one business day after the missed Answer date, Plaintiff filed a Motion for Default Judgment against Mr. Gregory, and presented it to the Court for signature on the same date.

6. On October 12, 2018, Mr. Arnett contacted Plaintiff's counsel and informed Plaintiff's counsel of his representation of Mr. Gregory and of his intent to fully participate in the matter and to defend against the claims brought by the Plaintiff. However, Plaintiff refused to agree to vacate the Default Judgment and instead proceeded to file Statements of Judgment against Mr. Gregory in the counties where he owns property.

7. A clerical scheduling error by Mr. Gregory's counsel's office, resulting in minimal delay, should not be allowed to deprive Mr. Gregory of his right to his day in Court to defend himself against the Plaintiff's extremely serious allegations. Mr. Gregory has suffered unavoidable misfortune which allows for a Default Judgment to be set aside, as contemplated by 12 O.S. §1031(7).

BRIEF IN SUPPORT

The Plaintiff argues that the standard for unavoidable casualty or misfortune allowing for vacation of default judgments, as found in 12 O.S. 1031.1(7) requires two factors, and that the "simple act of negligently failing to timely file an answer is, by definition, not an unavoidable casualty." Citing, *American Bank of Commerce v. Chavis*, 1982 OK 66, 651 P.2d 1321 and *Coulsen v. Owens*, 2005 OK CIV APP 93, 125 P.3d 1233.

However, this hard line approach fails to acknowledge that Oklahoma law views default judgments with disfavor. *Feely v. Davis*, 1989 OK 163, ¶ 16, 784 P.2d 1066, 1070. The District Court has full control over its judgments or orders during the term in which they are rendered, and may vacate its judgments, in the exercise of its sound discretion, for sufficient cause shown. *Crabtree v. Crabtree*, 1966 OK 222, 420 P.2d 494. In *Heitman v. Brown*, 1996 OK CIV APP 148, 933 P.2d 948, 951, the Defendant requested vacation of a judgment due to a missed deadline caused by erroneous docketing by the attorney. The Court held that “neither the gravity of the inadvertence nor the neglect of [Defendant’s] counsel is such as ought, under the particular circumstances, to deprive [Defendant] of his day in court.” This holding applies precisely to the instant situation.


In Defendant’s Motion to Vacate, Mr. Gregory set forth the three factor test that Court’s use to determine whether or not to vacate a default judgment. The Court may consider: (1) whether the defaulting party had a valid defense; (2) whether vacation could be granted without substantial delay or injustice; and (3) whether allowing the default judgment to stand would work a serious injustice. *St. John Medical Center v. Brown*, 2005 OK CIV APP 101, 125 P.3d 700; 12 O.S. §1031.1; *Erbar v. Rare Hosp. Int’l, Inc.*, 2013 OK CIV APP 109, 316 P.3d 937. Mr. Gregory’s Motion to Vacate clearly sets forth the elements allowing for vacation of the default judgment under these three factors. First, Mr. Gregory has numerous defenses to the serious accusations brought against him in Plaintiff’s Petition. Second, only a few days passed between the statutory Answer date and the actual Answer date, resulting in no significant delay. Third, granting a default judgment against Mr. Gregory for multi-state, multi-million dollar fraud claims without allowing him to defend himself would be a grievous injustice to Mr. Gregory. A trial court addressing a timely motion to vacate a default judgment has very wide and extended

discretion that is almost unlimited to vacate such a judgment. 12 O. S. §1031.1(B). See also, *Erbar v. Rare Hosp. Int'l, Inc.*, 2013 OK CIV APP 109, 316 P.3d 937.

CONCLUSION

WHEREFORE, Mr. Gregory moves this Court to vacate the default judgment against him on the grounds and for the reasons that he has been prevented from timely responding to the Petition by reason of a clerical error due to a recent staffing change at his counsel's office; that no substantial delay will result; and, that the interest of justice requires him to be allowed to respond to and defend against the allegations in Plaintiff's Petition.

Respectfully submitted,




Michael Arnett, OBA #12071
3133 NW 63rd Street
Oklahoma City, OK 73116
(405) 767-0527 telephone
(405) 767-0529 facsimile
Attorney for the Respondent

CERTIFICATE OF MAILING

I hereby certify that on the 15th day of November 2018, a true and correct copy of the above and foregoing document was mailed by first class mail, postage prepaid, to the following:

Shaun Mullins
Amanda Cornmesser
Oklahoma Department of Securities
204 N. Robinson, Suite 400
Oklahoma City, OK 73102



M. Michael Arnett