

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
NEWNAN DIVISION**

IN THE MATTER OF:	:	CASE NUMBERS
	:	
JAMES CLINTON BRADSHAW,	:	BANKRUPTCY CASE
	:	NO. 03-11034-WHD
	:	
Debtor.	:	
_____	:	
	:	
THEO D. MANN,	:	ADVERSARY PROCEEDING
in his capacity as Trustee of the	:	NO. 04-1003
estate of James Clinton Bradshaw,	:	
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
JAMES CLINTON BRADSHAW	:	
HUJA BRADSHAW,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendants.	:	BANKRUPTCY CODE

ORDER

On November 24, 2004, the Court granted the Motion to Compel Discovery, filed by Theo D. Mann (hereinafter the "Plaintiff") in the above-captioned adversary proceeding. The Court ordered defendant Huja Bradshaw (hereinafter the "Defendant") to respond fully to the Plaintiff's request for production of documents by the close of business on Friday, December 10, 2004. On December 21, 2004, the Plaintiff filed a motion for sanctions, in which the Plaintiff submitted that the Defendant failed to respond as ordered. On January 10, 2004, the Court granted the Plaintiff's motion for sanctions against the Defendant by striking the Defendant's answer, and entered a default judgment against the Defendant avoiding the transfer of funds from James Clinton Bradshaw (hereinafter the "Debtor") to

the Defendant. On January 13, 2005, the Defendant filed the instant Motion to Vacate Judgment. The Plaintiff has filed a response in opposition to the Defendant's Motion. This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 1334; 157(b)(2)(F);(H).

In its January 10th Order, the Court noted that the Defendant had failed to respond to the Plaintiff's Motion, and it was, therefore, deemed unopposed. *See* BLR 7007-1(b). The Court outlined the various sanctions for misconduct during discovery, which are permitted by Rule 37(b)(2) of the Federal Rules of Civil Procedure, made applicable to this proceeding by Rule 7037 of the Federal Rules of Bankruptcy Procedure. After noting that the Defendant failed to respond to either the Plaintiff's motion to compel or the motion for discovery sanctions, the Court found that striking the Defendant's answer would be an appropriate sanction for her failure to comply with the Court's November 24th Order.

CONCLUSIONS OF LAW

The Defendant has requested that the Court set aside its order striking the Defendant's answer and vacate the entry of the default judgment entered by this Court on January 10, 2005. Rule 60(b), made applicable to this proceeding by Rule 9024 of the Federal Rules of Bankruptcy Procedure, provides:

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not

have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the finality of a judgment or suspend its operation.

FED. R. CIV. P. 60(b).

According to the Defendant's motion, the Defendant seeks relief under subsection (1), which requires a showing of mistake, inadvertence, surprise, or excusable neglect.

As to the establishment of excusable neglect, the United States Supreme Court has stated that this "determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission," including "danger of prejudice to the [other party], the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S. 380 (1993).

The Defendant argues that she should be excused from the effect of the default judgment because her attorney did not take care of the discovery matter as he should have. However, the facts set forth by the Defendant are insufficient to make a showing of excusable neglect. The Defendant's attorney has stated that the failure to respond to

the Trustee's motion to compel and motion for discovery sanctions, as well as the failure to produce the documents at issue, resulted from the fact that the Defendant's attorney moved his office on December 1, 2004, and that during the move of Defendant's attorney's office, Defendant's attorney experienced a computer "crash." The Defendant has proffered no real explanation as to why discovery requests served in July 2004 could not have been answered prior to the time that Defendant's attorney moved his office. Additionally, the Defendant has not addressed the failure of the Defendant's attorney to file a change of address with the Court to ensure that service of the Trustee's motions and the Court's order compelling production would reach the Defendant's attorney. Under the circumstances, and with the limited information available to the Court, the Court cannot conclude that the failure to comply with the Court's Order was reasonably outside the control of the Defendant and her attorney or that the Defendant was acting in good faith. The Defendant had several opportunities to participate in discovery during this case and to respond to the Trustee's requests and motions, but did not do so. The Court is not satisfied that the Defendant's failure to do so resulted from the Defendant's attorney's office relocation and computer problems. Accordingly, the Motion to Vacate Judgment is hereby **DENIED**.

IT IS SO ORDERED.

At Newnan, Georgia, this 9th day of March, 2005.



W. HOMER DRAKE, JR.
UNITED STATES BANKRUPTCY JUDGE