

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
TEXAS, HOUSTON DIVISION

Robin Marie Smith v. Freedom Mortgage Corporation

Smith v. Freedom Mortgage · No. 4:25-CV-3345 · Decided December 17, 2025

SUMMARY

This Memorandum and Recommendation addresses a pro se plaintiff’s motions to reinstate a case dismissed for failure to timely effect service and for default judgment against Freedom Mortgage Corporation. The court recommends reinstating the case under Federal Rule of Civil Procedure 60(b)(1) based on excusable neglect, but recommends denying the default-judgment motion without prejudice because default had not been entered and additional pleading, damages, service, and procedural requirements had not been satisfied. The parties were given fourteen days to file objections.

CASE DETAILS

COURT	United States District Court for the Southern District of Texas, Houston Division
WRITING FOR THE COURT	United States Magistrate Judge
JURISDICTION	United States District Court for the Southern District of Texas, Houston Division
DECIDED	December 17, 2025
DOCKET	4:25-CV-3345
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved to reinstate an action previously dismissed without prejudice for failure to effect service within the time required by Federal Rule of Civil Procedure 4(m), and separately moved for default judgment. The magistrate judge recommended granting reinstatement and denying the default-judgment motion without prejudice.
STANDARD OF REVIEW	Relief from judgment under Federal Rule of Civil Procedure 60(b)(1) is assessed under an equitable excusable-neglect standard considering the relevant circumstances, including prejudice, delay and its effect on proceedings, the reason for delay and whether it was within the movant's control, and good faith. A motion for default judgment is evaluated under Federal Rule of Civil Procedure 55 and requires prior entry of default.

PRECEDENTIAL VALUE	nonprecedential
PARTIES	Robin Marie Smith v. Freedom Mortgage Corporation

TOPICS

default judgment default service of process motion for reconsideration civil procedure

PRACTICE AREAS

civil procedure default judgment service of process remedies

QUESTIONS PRESENTED

1. Whether Plaintiff was entitled to relief from the dismissal under Federal Rule of Civil Procedure 60(b) (1) based on excusable neglect.
2. Whether Plaintiff's motion for default judgment was procedurally proper when the clerk had not entered default against Defendant.
3. What additional requirements Plaintiff must satisfy in any renewed motion for default judgment.

HOLDINGS

1. The magistrate judge recommended granting Plaintiff relief from the dismissal because her prompt motion, lack of demonstrated bad faith or prior dilatory conduct, postpartum health complications, and lack of prejudice to the nonappearing Defendant established excusable neglect.
2. The magistrate judge recommended denying the motion for default judgment without prejudice because the clerk had not entered default, making the motion premature, and because default alone would not establish entitlement to judgment.

KEY QUOTATIONS

“The Court finds good cause to grant Plaintiff relief from the judgment dismissing her case without prejudice.” (I. Motion to Reinstate)

“Entry of default under Rule 55(a) is a necessary precondition to a motion for default judgment under Rule 55(b).” (II. Motion for Default Judgment)

“Further, a defendant’s default is a necessary, but not sufficient, basis for entry of default judgment.” (II. Motion for Default Judgment)

FACTUAL BACKGROUND

Robin Marie Smith filed a pro se action against Freedom Mortgage Corporation asserting claims under RESPA, the FDCPA, and state law. A process server affidavit stated that Defendant was served on July 23, 2025, but Plaintiff did not file proof of service and the record did not reflect timely service when the case was dismissed. Plaintiff attributed her failure to prosecute effectively to serious postpartum health complications and sought reinstatement and default judgment.

PROCEDURAL HISTORY

Plaintiff filed a pro se complaint on July 18, 2025, asserting claims under RESPA, the FDCPA, and state law. The district court dismissed the action without prejudice on November 17, 2025, because the record did not show service on Defendant within 90 days. Plaintiff then moved to reinstate the case and for default judgment, submitting affidavits concerning service and the health-related reasons she had not filed proof of service. The magistrate judge recommended reinstatement under Rule 60(b)(1), denial of default judgment as premature, and a 21-day period to seek entry of default and file a compliant default-judgment motion.

DISPOSITION

other

REMAND INSTRUCTIONS

The magistrate judge recommended that Plaintiff request entry of default and file a motion for default judgment complying with Rule 55 and the Memorandum and Recommendation within 21 days after adoption, if any. Any renewed motion should identify the complaint allegations supporting each claim, include evidence of damages, provide legal support for the propriety of service, and comply with Local Rule 5.5.

CASES CITED

- *iiiTec Ltd. v. Weatherford Tech. Holdings, LLC*, No. CV H-19-3386, 2022 WL 138030, at *6 (S.D. Tex. Jan. 14, 2022)
- *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 395 (1993)
- *Nishimatsu Construction Co. v. Houston National Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975)
- *Lindsey v. Prive Corp.*, 161 F.3d 886, 893 (5th Cir. 1998)
- *Douglass v. United Services Automobile Association*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc)

OPINION

ROBIN MARIE SMITH v. FREEDOM MORTGAGE CORPORATION

PER CURIAM.

UNITED STATES DISTRICT COURT December 17, 2025 SOUTHERN DISTRICT OF TEXAS

Nathan Ochsner, Clerk

HOUSTON DIVISION

ROBIN MARIE SMITH, §

Plaintiff, § §

v. § CIVIL ACTION NO. 4:25-CV-3345

§

FREEDOM MORTGAGE CORPORATION, §

Defendant. §

MEMORANDUM AND RECOMMENDATION

On July 18, 2025, Plaintiff, appearing pro se, filed an Original Complaint asserting claims under the Real Estate Settlement Procedures Act (RESPA), Fair Debt Collection Act (FDCPA), and state law against Defendant Freedom Mortgage Corporation. ECF 1. The clerk issued a summons for Defendant and delivered it to Plaintiff for service. ECF 2. On November 17, 2025, the district judge dismissed the case without prejudice because the record did not reflect that Plaintiff had served Defendant within 90 days of filing her Complaint as required by Federal Rule of Civil Procedure 4(m). ECF 8. Now before the Court are Plaintiff's Motion for Default Judgment filed on December 9, 2025 (ECF 10), and Motion to Reinstate Case filed on December 11, 2025 (ECF 12).¹ Attached to the Motion for Default Judgment is an Affidavit of 1 The District Court referred this case to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), the Cost and Delay Reduction Plan under the Civil Justice Reform Act, and Federal Rule of Civil Procedure 72. ECF 13. Service from a process server attesting that on July 23, 2205 he personally served Mr. Otis King, an employee "authorized to accept for Freedom Mortgage Corporation" at 401 New Jersey Highway 73 30 Lake Center Drive, Marlton, NJ 08053. ECF 10 at 3. Attached to the Motion to Reinstate is Plaintiff's Affidavit attesting that her failure to file proof of service and effectively prosecute her case prior to dismissal was due to serious postpartum health complications. ECF 12-1. I. Motion to Reinstate The Court considers Plaintiff's Motion to Reinstate under Federal Rule of Civil Procedure 60(b)(1), which permits a party to seek relief from a judgment due to "(1) mistake, inadvertence, surprise, or excusable neglect." The determination of whether a party is entitled to relief for excusable neglect is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission." *iiiTec Ltd. v. Weatherford Tech. Holdings, LLC*, No. CV H-19-3386, 2022 WL 138030, at *6 (S.D. Tex. Jan. 14, 2022) (quoting *Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 395 (1993)). The court considers factors such as "(1) the danger of prejudice to the non-movant; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith." *Id.* The Court finds good cause to grant Plaintiff relief from the judgment dismissing her case without prejudice. She moved promptly to reinstate after entry of final judgment and she has not demonstrated bad faith or prior dilatory conduct. Plaintiff's health challenges are a reasonable explanation for her failure to prosecute. Reinstatement will not prejudice Defendant, which has not yet made an appearance in this case. Therefore, reinstatement is warranted under Rule 60(b)(1) based on the pro se Plaintiff's excusable neglect. II. Motion for Default Judgment Federal Rule of Civil Procedure 55 governs entry of default and default judgment. Rule 55(a) permits entry of default by the clerk "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." Entry of default under Rule 55(a) is a necessary precondition to a motion for default judgment under Rule 55(b). Because the clerk has not entered default against Defendant, Plaintiff's Motion for Default Judgment is premature.

Further, a defendant's default is a necessary, but not sufficient, basis for entry of default judgment. There must be "a sufficient basis in the pleadings" to warrant entry of judgment. *Nishimatsu Const. Co. v. Houston Nat. Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) (holding that default judgment is not automatic upon defendant's failure to appear and must be well-supported by the pleadings). The Court is not satisfied at this juncture that Plaintiff's Original Complaint states a valid claim for relief against Defendant. Plaintiff also fails to attach an affidavit to prove her damages. Any future Motion for Default Judgment must specify the factual allegations in the Original Complaint which support her claims and must be accompanied by an affidavit or other evidence of damages. In addition, when determining whether to enter default judgment the court will consider six factors, one of which is "whether the court would think itself obliged to set aside the default on the defendant's motion." *Lindsey v. Prive Corp.*, 161 F.3d 886, 893 (5th Cir. 1998). Therefore, any future motion for default judgment must provide legal support for Plaintiff's contention that service on Defendant on July 23, 2025 was procedurally proper. Finally, any future motion for default judgment² must comply with Local Rule of the Southern District of Texas 5.5, which requires that "[m]otions for default judgment must be served on the defendant-respondent by certified mail (return receipt requested)." III. Conclusion and Recommendation For the above reasons, the Court RECOMMENDS that Plaintiff's Motion to Reinstate (ECF 12) be GRANTED. The Court further RECOMMENDS that Plaintiff's Motion for Default Judgment (ECF 10) be DENIED without prejudice ² Plaintiff complied with LR 5.5 when filing the instant Motion to Dismiss. ECF 10 at 2. and Plaintiff be ordered to request entry of default and file a motion for default judgment in compliance with Rule 55 and this Memorandum and Recommendation within 21 days of adoption of this Memorandum and Recommendation, if any. The Clerk of the Court shall send copies of the memorandum and recommendation to the respective parties, who will then have fourteen days to file written objections, pursuant to 28 U.S.C. § 636(b)(1)(C). Failure to file written objections within the time period provided will bar an aggrieved party from attacking the factual findings and legal conclusions on appeal. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc), superseded by statute on other grounds. Signed on December 17, 2025, at Houston, Texas. United States Magistrate Judge