

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PRECEDENTIAL VALUE	nonprecedential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)