

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Hall of Justice, Department 54

JUDICIAL OFFICER: HONORABLE RICHARD C. MIADICH

Courtroom Clerk: Danyell Johnson-
Mellado/Ashton Turner
Court Attendant: Randy Udell

CSR: None

24CV020925

May 19, 2025
9:00 AM

IN THE MATTER OF: GWENDOLYN MARTIN

MINUTES

APPEARANCES:

No Appearances

NATURE OF PROCEEDINGS: Hearing on Motion - Other to Set Aside Default

Tentative Ruling:

Defendant Newrez LLC dba Shellpoint Mortgage Servicing's ("Respondent" or "Shellpoint") motion to set aside order is ruled upon as follows.

On May 22, 2023, Petitioner Gwendolyn Martin ("Petitioner") filed a prior complaint against Defendant in the Superior Court of California, County of Sacramento, which was assigned case number 23CV002126 (the "Prior Litigation"). In the Prior Litigation, Petitioner pled causes of action for: 1) California Military Families Financial Relief Act; 2) California Rosenthal Act; 3) California Consumer Credit Reporting Agencies Act; 4) Negligent Misrepresentations; and 5) Intentional/Reckless Misrepresentations. (Cahill Decl., ¶ 3.)

The Parties settled and resolved the Prior Litigation, and that case was dismissed on February 28, 2024, with prejudice. (Cahill Decl., ¶ 4.)

On October 15, 2024, Petitioner filed the instant Petition against Shellpoint. The original petition scheduled a hearing for November 7, 2024. (Cahill Decl., ¶ 5.)

Respondent was served with the original petition on October 17, 2024, which was physically delivered on October 23, 2024. (Hartman Decl., ¶¶ 8-9.) Respondent did not file an appearance.

That hearing was dropped due to issues with the original petition. (Cahill Decl., ¶ 6.)

Then, Respondent was served on November 15, 2024 with the amended petition that contained the hearing date of December 10, 2024. The amended petition was also physically delivered to Respondent on November 5, 2024. (Decl. of Hartman, ¶¶ 10-12.)

On November 21, 2024, Respondent's counsel was retained by Shellpoint. (Cahill Decl., ¶ 7.) Also on November 21, 2024, Respondent's counsel called counsel for Petitioner and informed him of Respondent's counsel's retention. According to Respondent, their counsel also informed Petitioner's counsel of the Prior Litigation and settlement thereof, and informed Petitioner's

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counsel of Respondent's view that the terms of the original petition conflicted with the terms of the Settlement Agreement between the Parties. Petitioner's counsel requested a copy of the Settlement Agreement. Respondent's counsel also raised issues about how to account for payments and proposed that the Parties come to a stipulation that would resolve the Petition, delineate the months to be deferred, ensure compliance with the Settlement Agreement, and make clear how prior payments made during the period of proposed deferment would be handled. (Cahill Decl., ¶ 8.) The amended petition and new hearing were not discussed.

On November 21, 2024, Respondent's counsel emailed Petitioner's counsel and provided the requested copy of the Settlement Agreement. (Cahill Decl., ¶ 10, Ex. A.)

On December 2, 2024, Petitioner's counsel emailed Respondent's counsel regarding a potential stipulation that would be more consistent with the terms of the Settlement Agreement. Petitioner's counsel stated he was also open as to how to handle payments made by the Petitioner for any months that would be subject to the proposed deferred payments in the stipulation. (Cahill Decl., ¶ 11, Exhibit B.)

On December 2, 2024, Respondent's counsel responded to Petitioner's counsel and stated he would need to discuss the terms with his client. (Cahill Decl., ¶ 12, Ex. C.) This was last communication between Respondent and Petitioner's counsel until February 26, 2025, with Respondent's counsel stating they would "circle back [] shortly", but then failing to take any further action for 86 days. (Cahill Decl., ¶¶ 12, 19, Ex. A-C.)

On December 5, 2024, Respondent's counsel pulled an updated docket on the case. It revealed nothing further had been filed by Petitioner since the minute order vacating the hearing on the original petition. (Cahill Decl., ¶ 13, Ex. D.)

On December 6, 2024, an Amended Petition was filed by Petitioner. (Cahill Decl., ¶ 14.)

Respondent did not file an appearance or appear at the December 10, 2024 hearing.

The Court, in granting the December 10, 2024 petition, stated:

The Court finds that Petitioner has properly served the petition. A petition under section 409.3 must be served at least 10 days before the hearing. (Mil. & Vet. Code § 409.3(b).) Additionally, service "must be made in the manner provided by law for service of summons in civil actions." (Cal. Rules of Court, rule 3.1372.) **Here, the petition was served on November 15, 2024, via certified mail, return receipt requested, on respondent's registered agent for service of process. Petitioner's proof of service includes the signed return receipts confirming delivery. Service in this manner is permitted because respondent is a foreign limited liability company.** (Code Civ. Proc. § 415.40.)

(December 10, 204 Order on Amended Petition. [Emphasis added.]

The Order on the Amended Petition was not served upon Respondent's counsel. Petitioner's counsel did not inform Respondent's counsel that an Order had been entered on the Amended Petition. (Cahill Decl., ¶ 17.)

On February 25, 2025, Petitioner filed a new Complaint against Shellpoint in the Superior Court

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of California, County of Sacramento, which was assigned case number 25CV004513. That Complaint alleges that Shellpoint has not complied with the Order on Amended Petition. (Cahill Decl., ¶ 18.)

Respondent now brings the instant motion to set aside the Order on Amended Petition.

Respondent argues that the order on the amended petition should be set aside under Code of Civil Procedure section 473(b) because it is akin to a default and it was entered as a result of inadvertence, mistake, and excusable neglect. Respondent argues that Petitioner will not be prejudiced if the order is set aside because the order violates the settlement agreement between the parties.

Respondent also argues that the order should be set aside because Petitioner failed to properly warn of its intent to seek the order on the amended petition.

Petitioner opposes the motion arguing that the “mandatory” relief standards under Section 473(b) is strictly limited to instances of “entry of default”, “default judgment”, and “dismissal”, none of which occurred here. (*English v. IKON Business Solutions, Inc.* (2001) 94 Cal. App. 4th 130, 143-150.) The provision of § 473 which “mandates” relief from a judgment of dismissal or judgment by default does not mandate relief from other judgments. In all other cases, relief is discretionary. (*Ayala v. Southwest Leasing & Rental, Inc.* (1992) 7 Cal. App. 4th 8; *Generale Bank Nederland v. Eyes of the Beholder Ltd.* (1998) 61 Cal. App. 4th 1384, 1399.)

“Discretionary” relief can only be granted upon a showing of excusable neglect.

Petitioner argues that here, it is not entirely clear what Respondent is claiming to be excusable neglect beyond simply alleging lack of knowledge of the hearing date. Petitioner argues that this assertion is demonstrably false because Respondent was served in a timely manner.

In reviewing whether the moving party has established excusable neglect, the Court must look at two factors: (1) the nature of the mistake or neglect, and (2) whether counsel was otherwise diligent in pursuing the claim. (*Community Youth Athletic Center v. City of National City* (2009) 170 Cal.App.4th 416.) It is Respondent who must bear this burden of proof. (*Luri v. Greenwald* (2003) 107 Cal.App.4th 1119.)

Petitioner points out that if it is apparent that the attorney is covering up for the client’s mistake, relief is denied. (*Rodrigues v. Superior Court* (2005) 127 Cal. App. 4th 1027; *Brown v. Williams* (2000) 78 Cal. App. 4th 182, n.3.)

Petitioner argues that if the facts here show that it was Respondent itself who failed to notify its own Counsel of the hearing date on the amended petition that had been served on Respondent directly, then Counsel’s lack of knowledge is due to the fault of his own client and the principles of Section 473(b) do not apply.

When the moving party fails to establish excusable neglect, the Court has no discretion to do anything other than deny the motion. (*Huh v. Wang* (2007) 158 Cal. App. 4th 1406, 1423.)

On reply, Respondent attempts to distinguish case law relied upon by Petitioner. However, Petitioner does not refer the Court to case law which would affirmatively support its position that the mandatory relief provision of Code of Civil Procedure section 473(b) applies to an order on a petition under Section 400 of the California Military and Veteran’s Code.

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Also on reply, Respondent argues that even if mandatory relief does not apply, the Court should grant discretionary relief based on counsel's inadvertence, mistake, and excusable neglect in failing to calendar and make arrangements to appear at the hearing. However, it appears to be the mistake of the Respondent itself, not counsel, in failing to tell counsel or take action to appear at the hearing on the amended petition. This does not constitute excusable neglect sufficient for discretionary relief, as noted above.

The Court does not make a determination here as to whether Petitioner has violated the terms of the settlement agreement between the parties. If Petitioner has breached an agreement to which she is bound, there are remedies for such a breach that are not before the Court on this motion, nor in this action.

Respondent's motion to set aside order is DENIED.

COURT RULING:

There being no request for oral argument, the Court affirmed the tentative ruling.

By: ^{/s/ A. Turner}
A. Turner, Deputy Clerk

Minutes of: 05/19/2025
Entered on: 05/19/2025