

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 21-SC-03025

Synchrony Bank v. Rex Clement

ENTRY REGARDING MOTION

Title: Motion to Vacate Judgment (Motion: 1)
Filer: Joseph Hall
Filed Date: February 15, 2023

This small claims case was filed in October of 2021. Defendant was served in December of 2021. Plaintiff then took no action for many months, and in August of 2022 the court sent notice that the case would be dismissed if nothing was filed by mid-September. Plaintiff did nothing, and the court therefore dismissed the case on October 27. Plaintiff now moves to vacate that dismissal, offering no basis other than that the client's affidavit was not received by counsel in time to meet the September deadline.

Discussion

The rules require the filing of a default motion within 60 days of the answer due date. V.R.S.C.P. 3(e). Defendant was served in December of 2021. Any default motion was therefore due in February of 2022, *a year ago*. The court generously gave Plaintiff a warning that the case was about to be dismissed, but that warning triggered no action whatsoever on Plaintiff's part. The deadline given by the court ended in September. *See* Notice of Possible Dismissal (August 26, 2022. Any request for extension filed after that date requires that Plaintiff establish "excusable neglect." V.R.S.C.P. 13; V.R.C.P. 6(b)(1)(B). It is a high standard, "particularly when neglect stems from factors totally

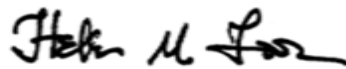
within the control of a party or its attorney.” In re von Turkovich, 2018 VT 57, ¶ 5, 207 Vt. 545 (quotation omitted). We look at several factors, but the key question is whether it was within the moving party’s reasonable control. Id.

Here, none of the other factors are significant, but the failure to plan ahead and obtain the necessary affidavit within the time required was certainly within the control of Plaintiff. There are no allegations of deaths in the family, computer crashes, acts of God, or anything else but a failure of counsel and/or the client to do what they should have done. *It is now a year since the default motion was due under the rules.* How Plaintiff can with a straight face argue that its inaction meets the definition of excusable neglect is beyond the court. If the courts do not take “an appropriately hard line” on this issue, “the legal system would groan under the weight of a regimen of uncertainty in which time limitations were not rigorously enforced. . .” In re Town of Killington, 2003 VT 87A, ¶ 17, 176 Vt. 60 (quoting Silivanch v. Celebrity Cruises, Inc., 333 F.3d 355, 368 (2d Cir. 2003)).

Order

The motion is denied. This motion verges on the frivolous. No excusable neglect is shown at all.

Electronically signed on February 21, 2023 pursuant to V.R.E.F. 9(d).



Helen M. Toor
Superior Court Judge