

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA
Miami Division

Case Number: 17-23052-CIV-MORENO

DONALD RAFAEL SANDIGO AGUINAGA,
and all others similarly situated,

Plaintiff,

vs.

E.T. ZACAPA GROUP CORP., CANCHE
CARPENTRY, INC., and CESAR TURCIOS,

Defendants.

**ORDER DENYING DEFENDANT'S MOTION TO DISSOLVE WRIT OF
GARNISHMENT, QUASH SERVICE OF PROCESS, AND SET ASIDE DEFAULT AND
DEFAULT JUDGMENT**

THIS CAUSE came before the Court upon Defendant's Motion to Dissolve Writ of Garnishment, Quash Service of Process, and Set Aside Default and Default Judgment (**D.E. 19**), filed on **May 3, 2018**. Plaintiff filed his Response to Defendant's Motion (**D.E. 21**) on **May 16, 2018**.

Federal Rule of Civil Procedure 55(c) provides that a "court may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b)." Rule 60(b)(1) provides for relief from a final judgment for "excusable neglect" upon a motion made within a "reasonable time." "The determination of what constitutes excusable neglect is generally an equitable one, taking into account the totality of the circumstances surrounding the party's omission." *Sloss Indus. Corp. v. Eurisol*, 488 F.3d 922, 934 (11th Cir. 2007) (citing *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. Partnership*, 507 U.S. 380, 389, 395 (1993)).

Defendant E.T. Zacapa Group asks this Court to dissolve the writ of garnishment, quash service of process, and set aside default and default judgement on the grounds that service of process was invalid. On August 17, 2017, Plaintiff's process server served Cesar Turcios with a copy of the summons and complaint at 1827 NW 1st Street, Miami, FL 33125. Plaintiff contends that Cesar Turcios was the registered agent of E.T. Zacapa Group and Canche Carpentry, Inc. at the time of service.

Defendant E.T. Zacapa Group disputes Plaintiff's contentions, arguing that service of process on Cesar Turcios cannot constitute valid service as to E.T. Zacapa Group because Cesar Turcios is "an individual unrelated to the corporation." (Def.'s Mot. at 5.) Indeed, Eduardo Turcios, who claims to be the President of Defendant E.T. Zacapa Group, swore under oath in an affidavit from March 15, 2018 that Cesar Turcios "is neither an officer of the corporation nor its Registered Agent." (Exhibit A.) Eduardo Turcios also contends that Cesar Turcios never notified him about the service of process in this proceeding.

Interestingly, it appears that Cesar Turcios was also busy making an affidavit under oath on March 15, 2018. Just like Eduardo Turcios's affidavit, Cesar Turcios's affidavit accompanied a motion to set aside default judgment in another case where E.T. Zacapa Group neglected to respond to or answer the complaint. In that affidavit, Cesar Turcios stated, "I am the President of the Defendant Corporation, Canche Carpentry, Inc. and E.T. Zacapa Group, Corp." (Exhibit B.) In other words, E.T. Zacapa Group's position *in this case*—*i.e.*, that Cesar Turcios is "unrelated to the corporation"—directly conflicts with its position *in a related case*—*i.e.*, that Cesar Turcios is the President of E.T. Zacapa Group.

The Court notes that the Turcios' irreconcilable affidavits contain almost identical language, were sworn to and subscribed on the same day before the same notary, and most notably, were filed on behalf of E.T. Zacapa Group by the same attorney, Jerome Ramsaran. This Court strongly suggests that Mr. Ramsaran take some time to review his ethical responsibilities as a lawyer, particularly his duty of candor toward the tribunal. Should he continue to struggle with this concept, the Court will gladly refer him to the Florida Bar for additional guidance.

Ultimately, Defendant E.T. Zacapa Group fails to establish good cause to dissolve the writ of garnishment, quash service of process, and set aside default and default judgement. To the extent Defendant's conduct qualifies as neglect, as opposed to intentional misrepresentation and obstruction of the judicial process, it certainly is not excusable. Accordingly, it is ADJUDGED that Defendant's Motion to Dissolve Writ of Garnishment, Quash Service of Process, and Set Aside Default and Default Judgment is DENIED.

DONE AND ORDERED in Chambers at Miami, Florida, this 6th ^{June} ~~May~~ 2018.


FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record

Exhibit A

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF FLORIDA

DONALD RAFAEL SANDIGO AGUINAGA,
and all Others similarly situated under 29 U.S.C. 216(b),

Case no. 17-CV-23052

v.

E.T. ZACAPA GROUP CORP, CANCHE CARPENTRY;
CESAR TURCIOS,

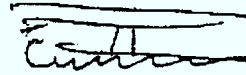
AFFIDAVIT OF EDUARDO TURCIOS

STATE OF FLORIDA)
)ss.
County of Miami-Dade)

Before me, the undersigned authority, personally appeared EDUARDO TURCIOS, who, being by me duly sworn, deposed as follows:

I, the undersigned Defendant, am over eighteen (18) years of age, competent of making this affidavit and personally acquainted with the facts herein stated:

- a) I am the President of the Defendant Corporation, E.T. ZACAPA GROUP CORP.
- b) The individual named on the Affidavit of Service is neither an officer of the corporation nor its Registered Agent.
- c) The individual named on the Affidavit of Service does not reside at the address: 2354 NW 29th Street, Miami, FL 33142.
- d) That the affiant was neither given knowledge of the above proceeding nor notified by the individual listed in the Affidavit of Service.



EDUARDO TURCIOS

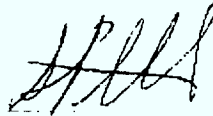
STATE OF FLORIDA:

SS

COUNTY OF

BEFORE ME, the undersigned authority, personally appeared EDUARDO TURCIOS, who, being by me first duly sworn and cautioned, stated that the information contained herein is true and correct to the best of his/her knowledge and belief and who is personally known to me or who produced Driver's License as identification.

SWORN TO AND SUBSCRIBED before me this 15TH day of March, 2018.



NOTARY PUBLIC, State of Florida

My Commission Expires:



Personally known ..

or

Provided I.D. Driver's License

Exhibit B

UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF FLORIDA

VICTOR HUGO CORDON BARAHONA,)
MYNOR RENE CORDON TRUJILLO, and)
all others similarly situated under 29 U.S.C.)
216 (b),)

Plaintiff(s),)

v.)

E.T. ZACAPA GROUP CORP,)
CANCHE CARPENTRY INC.,)
CHECHA CARPENTRY INC,)
CESAR TURCIOS,)

Defendant(s).)

Case No. 17-CV-23514-JLK

AFFIDAVIT OF CESAR TURCIOS

STATE OF FLORIDA)

) ss.

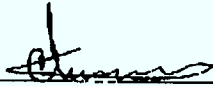
County of Miami-Dade)

Before me, the undersigned authority, personally appeared CESAR TURCIOS, who,
being by me duly sworn, deposed as follows:

I, the undersigned Defendant, am over eighteen (18) years of age, competent of making
this affidavit and personally acquainted with the facts herein stated:

- a) I am the Defendant in the above-referenced matter.
- b) I am the President of the Defendant Corporation, Canche Carpentry, Inc. and E.T. Zacapa Group, Corp.
- c) The individual named on the Affidavit of Service is neither an officer of the corporation nor its Registered Agent.

- d) The individual named on the Affidavit of Service, does not reside at the address: 1827 NW 1st Avenue, Miami, FL 33125.
- e) That the affiant was neither given knowledge of the above proceeding nor notified by the individual listed in the Affidavit of Service.



CESAR TURCIOS

STATE OF FLORIDA:

ss

COUNTY OF _____

BEFORE ME, the undersigned authority, personally appeared CESAR TURCIOS, who, being by me first duly sworn and cautioned, stated that the information contained herein is true and correct to the best of his/her knowledge and belief and who is personally known to me or who produced Driver's License as identification.

SWORN TO AND SUBSCRIBED before me this 15th day of March 2018.



NOTARY PUBLIC, State of Florida

My Commission Expires: _____

Personally known _____

or

Provided I.D. Driver's License

