

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

PC DRIVERS HEADQUARTERS, LP,

Plaintiff,

v.

AMBICOM HOLDINGS, INC.,

Defendant.

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1:15-CV-1038-RP

ORDER

Before the Court is Defendant AmbiCom Holdings Inc.’s Motion for Reconsideration. (Dkt. 37). Having reviewed the pleadings and the relevant legal authorities, the Court issues the following order.

BACKGROUND

Plaintiff PC Drivers Headquarters, L.P. (“PCD”) sued Defendant AmbiCom Holdings, Inc. (“AmbiCom”) for breach of contract. According to Plaintiff, PCD and AmbiCom entered into a joint business venture to develop, market, and sell certain software-related products and services. (Orig. Pet. ¶ 7; Mot. Default. J. ¶ 8). PCD contended that, following AmbiCom’s repeated failure to perform its contractual obligations, it was forced to make payments owed by AmbiCom to various third parties in order to preserve PCD’s ownership of certain assets. (Mot. Default. J. ¶ 8). PCD sought compensatory damages for the payments made on behalf of AmbiCom, a declaratory judgment defining its surviving rights following the termination of the business venture, a permanent injunction, and attorneys’ fees. (*Id.*).

On October 29, 2015, Plaintiff filed this action in the 201st Judicial District Court of Travis County, Texas. On November 17, 2015, AmbiCom removed the case to this Court. AmbiCom did not file an answer or any other defensive pleading in the state court action prior to removal, nor did

it do so after removal in this Court. On December 4, 2015, AmbiCom's counsel filed a motion to withdraw. The Court held a hearing on December 17, 2015, and entered an order granting the motion to withdraw. In the order, the Court admonished Defendant "if its financial situation should change, it should retain litigation counsel expeditiously, as the probable consequence of proceeding without counsel is the issuance of a default judgment." (Order, Dkt. 9.) After AmbiCom's counsel withdrew, no other attorney made an appearance on its behalf.

On January 27, 2016, PCD filed a Motion for Entry of Default. (Dkt. 11). The Clerk of the Court entered a default against AmbiCom on January 26, 2016. (Dkt. 12). PCD thereafter moved the Court for the entry of default judgment, (Dkt. 13), which this Court granted by order dated April 19, 2016. (Dkt. 14). The Court entered final default judgment that same day. (Dkt. 15).

On January 19, 2017, nearly a year after PCD initially moved for entry of default, an attorney appeared on behalf of AmbiCom and filed a motion to set aside the default judgment. This Court denied the motion on March 20, 2017. AmbiCom has now filed a motion for reconsideration in which AmbiCom argues the Court erred in holding that a violation of Federal Rule of Civil Procedure 54(c) does not, standing alone, provide a basis for setting aside a judgment.

LEGAL STANDARD

Because the Federal Rules of Civil Procedure do not specifically provide for motions for reconsideration, *see Shepherd v. Int'l Paper Co.*, 372 F. 3d 326, 328 (5th Cir. 2004), courts often consider such motions by the standards of Federal Rule of Civil Procedure 59(e), a provision governing the grounds for alteration or amendment of a judgment. *See Jacoby v. Trek Bicycle Corp.*, No. 2:11-cv-124, 2011 WL 3240445, at *1 (E.D. Tex. July 28, 2011). The party moving for the remedy must show "(1) an intervening change in controlling law; (2) the availability of new evidence not previously available; or (3) the need to correct a clear error of law or prevent manifest injustice." *Id.* (quoting *In re Benjamin Moore & Co.*, 318 F. 3d 626, 629 (5th Cir. 2002)).

A Rule 59(e) motion “calls into question the correctness of a judgment.” *In re Transstexas Gas Corp.*, 303 F.3d 571, 581 (5th Cir. 2002). It is not the proper vehicle for “rehashing evidence, legal theories, or arguments that could have been offered or raised before the entry of judgment.” *Templet v. HydroChem, Inc.*, 367 F.3d 473, 478 (5th Cir. 2004); *Simon v. United States*, 891 F.2d 1154, 1159 (5th Cir. 1990). Rather, the rule “serve[s] the narrow purpose of allowing a party to correct manifest errors of law or fact or to present newly discovered evidence.” *Waltman v. Int’l Paper Co.*, 875 F.2d 468, 473 (5th Cir. 1989). Thus, reconsideration of a judgment after its entry is an extraordinary remedy to be used only sparingly. *Templet*, 367 F.3d at 478.

DISCUSSION

In its prior motion to set aside the default judgment in this case, AmbiCom argued that this Court’s final default judgment was void, and thus should be set aside under Rule 60(b)(4), because it provided relief beyond what was requested in the pleadings in violation of Rule 54(c). (Mot. Set Aside Default J., Dkt. 16, at 10–12). The Court rejected AmbiCom’s argument, holding that a violation of Rule 54(c) is insufficient to warrant relief under Rule 60(b)(4) absent a showing that the Court lacked jurisdiction or acted in a manner inconsistent with due process. (Dkt. 36, at 5–6). Because AmbiCom had not made that showing, the Court denied its motion to set aside the default judgment under Rule 60(b)(4). (*Id.*). AmbiCom’s motion for reconsideration now goes further than its initial motion and argues that a violation of Rule 54(c) constitutes a violation of due process.

The Court is not persuaded that AmbiCom’s new argument justifies the relief it seeks. First, AmbiCom’s due process arguments could have been raised in support of its motion to set aside the default judgment. Instead, AmbiCom argued that a violation of Rule 54(c), standing alone, warrants relief under Rule 60(b)(6). As noted above, a motion for reconsideration is not the proper vehicle for presenting “arguments that could have been offered or raised before the entry of judgment” but were not. *Templet*, 367 F.3d at 478.

Second, the Court disagrees with the substantive proposition that a violation of Rule 54(c) is a per se violation of due process. This Court is of the view that Rule 54(c), like the rule governing service in *Espinosa*, is designed to safeguard a defaulting party's right to notice and an opportunity to be heard¹ by apprising him of the allegations against him and allowing him to consider whether to avail himself of his right to proceed with the litigation. *See In re Jacuinde*, Bankruptcy No. 08-15509-B-7, 2009 WL 9083939, at *4 (Bankr. E.D. Cal. Apr. 16, 2009) (“Rule 54(c) serves to protect the rights of defendants to due process by limiting the relief granted against a defaulting defendant to the relief the defendant was properly notified would be at issue.”). Accordingly, violations of the rule may indeed correlate with violations of due process. *See Stafford v. Jankowski*, 338 F. Supp. 2d 1225, 1228–29 (D. Kan. 2004) (“The purpose behind Rule 54(c) is to provide a defendant with notice of a plaintiff's request for relief, and a court risks denying a defendant his due process rights by entering an award that differs in kind or amount from that requested in the complaint.”).

However, the mere fact that a rule is aimed at protecting a constitutional right does not transform it into a constitutional mandate. For example, the due process underpinnings of Rule 4—setting out procedures for service of process on a defendant—are well established. *See, e.g., Brookshire Bros., Ltd. v. Chiquita Brands Int'l, Inc.*, No. 05-CIV-21692, 2007 WL 1577771, at *1 (S.D. Fla. May 31, 2007) (citing *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Yet it is equally established that “the Constitution does not require any particular means of service of process” *Rio Props., Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1017 (9th Cir. 2002); *A.L.T. Corp. v. Small Bus. Admin.*, 801 F.2d 1451, 1458 (5th Cir. 1986) (“Rule 4 does not purport to constitutionalize the minimum requirement of valid service of process.”). And where a defendant has actual notice and an

¹ AmbiCom asserts that “[n]otice and an opportunity to be heard are not the only due process rights of a defendant[.]” (Mot. Reconsideration, Dkt. 37, at 4). While that may be true, “Rule 60(b)(4) applies only in the rare instances where a judgment is premised . . . on a violation of due process that deprives a party of notice or the opportunity to be heard.” *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 270 (2010).

opportunity to respond, a failure to effect proper service may violate “a right granted by a procedural rule,” but it does not “amount to a violation of [the defendant’s] constitutional right to due process.” *Espinosa*, 559 U.S. at 272.

The Court finds this reasoning to be equally applicable in the context of Rule 54(c). Where a defaulting defendant has actual notice of relief sought beyond what is contained in the complaint and an opportunity to be heard on the matter, the due process rationale of Rule 54(c) is weakened. In other words, there is no longer any concern of surprising a defendant with relief “that, perforce, could not have been included in the defendant’s decisional calculus.” See *Hooper-Haas v. Ziegler Holdings, LLC*, 690 F.3d 34, 40 (1st Cir. 2012) (holding that the district court violated Rule 54(c) by providing relief requested in neither the complaint nor motion for default judgment and remanding to have only offending provisions removed).

This Court thus agrees with several others that have held that a default judgment granting relief beyond that requested in the complaint does not violate due process when the defaulting party was afforded notice and an opportunity to be heard. See *Barron v. Patel*, No. 3:10-CV-1636-D, 2013 WL 246649, at *4 (N.D. Tex. Jan. 23, 2013) (denying Rule 60(b) motion on ground that purported violation of Rule 54(c) did not violate due process where defendant had notice of hearing on damages, appeared at hearing, but did not rebut evidence provided by plaintiff); *In re Genesys Data Techs., Inc.*, 95 Haw. 33, 40 (Haw. 2001) (holding that violation of an analogous state rule of procedure does not violate due process “unless the violation deprived the defaulting party of due process by failing to provide notice of the scope of the claim and a meaningful opportunity to defend against it”); *Olivas v. Brentwood Place Apartments, LLC*, No. 09-4035-JAR, 2010 WL 2952393, at *9 (D. Kan. July 26, 2010) (“Notably, this case is not in the typical posture of a default judgment; here, defendants had an opportunity to challenge plaintiff’s entitlement to damages, the amount of damages, and whether her award should be limited. Defendants did not, and this Court concludes

that under these circumstances, defendants due process rights have not been denied.”); *Stafford*, 338 F. Supp. 2d at 1229 (“In this case, however, defendant’s due process rights have been preserved as plaintiff served defendant with a copy of his motion for default judgment . . .”).² In such situations, the defendant’s remedy is in timely objecting to the deprivation of his procedural protections, not in setting aside the judgment under Rule 60(b)(4). *See Espinosa*, 559 U.S. at 272 (“United could have timely objected to this deprivation and appealed from an adverse ruling on its objection. But this deprivation did not amount to a violation of United’s constitutional right to due process.”).

Having concluded that a Rule 54(c) violation could, but does not always, establish a violation of due process, the Court must address whether the default judgment in this particular case has violated AmbiCom’s due process rights. The Court finds that it has not. AmbiCom does not dispute that it had notice of PCD’s motion for default judgment and the relief requested therein. (*See* Mot. Default J., Dkt. 13, at 21 (certifying service on Defendant)). It also acknowledges that it had the time and resources to be heard on the matter if it wished. (Mot. Set Aside Default J., Dkt. 16, at 4 (“The Court did not act immediately on the Motion for Default, giving AmbiCom three months to find counsel to appear and defend the lawsuit.”); Cornell Decl., Dkt. 16-2, at 53 (“[A]lthough AmbiCom was in financial difficulty in December of 2015, it had the resources to pay [a lawyer] to file an answer on its behalf.”)). Thus, even if AmbiCom were to establish that the default judgment exceeded what was requested in PCD’s pleadings, it would not rise to the level of a violation of due process sufficient to set aside the judgment under Rule 60(b)(4).

² AmbiCom cites *Silge v. Merx*, 510 F.3d 157 (2d Cir. 2007), in support of its argument that notice alone is not enough to cure a Rule 54(c) violation. That case is inapposite. It concerned a timely appeal from the district court’s refusal to award greater relief in a default judgment than was requested in the pleadings. *Id.* at 159. It did not address the question at issue here, which is whether a Rule 54(c) violation renders the judgment void under Rule 60(b)(4). *See Espinosa*, 559 U.S. at 270 (“A judgment is not void, for example, simply because it is or may have been erroneous. Similarly, a motion under Rule 60(b)(4) is not a substitute for a timely appeal.”) (internal quotations and citations omitted).

As AmbiCom has not established that its due process rights were violated, it is again unsuccessful in persuading the Court that relief under Rule 60(b)(4) is warranted.

CONCLUSION

For the foregoing reasons, the Court **DENIES** AmbiCom's Motion for Reconsideration. (Dkt. 37).

SIGNED on April 4, 2017.

A handwritten signature in blue ink, appearing to read "R. Pitman", is written above a horizontal line.

ROBERT PITMAN
UNITED STATES DISTRICT JUDGE