

Even if the court has overlooked or misapprehended points of law or fact, a petition for rehearing will not be granted when it will not change the result. Rosokow v. Bob, 11 FSM R. 454, 456 (Chk. S. Ct. App. 2003); Berman v. Pohnpei, 17 FSM R. 464, 465 (App. 2011); Goya v. Ramp, 14 FSM R. 305, 307 (App. 2006). Accordingly, this second petition for rehearing is denied. The mandate will not be recalled.

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FSM SUPREME COURT TRIAL DIVISION

POHNPEI TRANSFER & STORAGE, INC.,	)	CIVIL ACTION NO. 2011-011
d/b/a POHNPEI TRAVEL,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
PERCY SHONIBER,	)	
	)	
Defendant.	)	
_____	)	

ORDER GRANTING DEFENDANT'S MOTION TO SET ASIDE ENTRY OF DEFAULT

Beauleen Carl-Worswick  
Associate Justice

Hearing: October 23, 2014  
Decided: November 5, 2014

APPEARANCES:

For the Plaintiff: Fredrick L. Ramp, Esq.  
Ramp & Mida Law Firm  
P.O. Box 1480  
Kolonias, Pohnpei FM 96941

For the Defendant: Salomon M. Saimon, Esq.  
Staff Attorney  
Micronesia Legal Services Corporation  
P.O. Box 129  
Kolonias, Pohnpei FM 96941

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HEADNOTES

Civil Procedure – Defaults and Default Judgments – Entry of Default – Setting Aside; Judgments from Judgment – Default Judgments

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside

a default judgment under Rule 60(b). The “good cause” threshold for Rule 55(c) relief is lower, ergo more easily overcome, than that which obtains under Rule 60(b) and the trial court should not read “good cause” too grudgingly. This more flexible approach reflects a policy decision that a default judgment should enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere default. Pohnpei Transfer & Storage, Inc. v. Shoniber, 19 FSM R. 614, 616 (Pon. 2014).

Civil Procedure – Defaults and Default Judgments – Entry of Default – Setting Aside

Because of the strong policies favoring resolution on the merits, the trial court has only a narrow scope of discretion, so that in a close case, a trial court should resolve its doubts in favor of a party seeking relief from the entry of a default. Pohnpei Transfer & Storage, Inc. v. Shoniber, 19 FSM R. 614, 616 (Pon. 2014).

Civil Procedure – Defaults and Default Judgments – Entry of Default – Setting Aside

When, upon receiving the complaint, the defendant visited an attorney for assistance and that attorney told the defendant that he was not admitted to practice in the FSM Supreme Court, and that he would seek other assistance to represent her; when, based on this advice, the defendant left Pohnpei, only to return a few years later to find that she was in default; and when her motion to set aside the default is unopposed, the defendant has met the good cause standard to set aside the entry of default. Pohnpei Transfer & Storage, Inc. v. Shoniber, 19 FSM R. 614, 616 (Pon. 2014).

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COURT’S OPINION

BEAULEEN CARL-WORSWICK, Associate Justice:

I. BACKGROUND

The plaintiff, Pohnpei Transfer and Storage, Inc. d/b/a Pohnpei Travel (herein “PT&S”), filed a Summons and Complaint against the defendant, Percy Shoniber (herein “Shoniber”), on February 10, 2011. An Amended Summons and Complaint was filed on February 14, 2011. No response was filed by Shoniber. On March 25, 2011, PT&S filed a Motion for Entry of Default and Motion for Default Judgment. Entry of Default was entered by the Clerk of Court in favor of PT&S on March 28, 2011.

An order entered on August 11, 2011 denied PT&S’s Motion for Default Judgment, requesting further proof of the validity of the \$9,400.80 allegedly owed to PT&S by Shoniber. PT&S filed another Motion for Entry of Default and Motion for Default Judgment on October 10, 2011.<sup>1</sup> On July 2, 2011, the court denied PT&S’s Motion for Default Judgment again requesting further proof of the amount owed by Shoniber.

On July 9, 2014, Salomon Saimon (herein “Saimon”), Esq., through the Micronesian Legal Services Corporation, on behalf of Shoniber, filed a Notice of Appearance, Motion to Set Aside Entry of Default and Motion for Enlargement of Time to File Motion to Set Aside Default. No response to the motions was filed by PT&S.

A hearing on Shoniber’s motions was held on October 23, 2014. Fredrick L. Ramp, Esq., appeared on behalf of PT&S, and Saimon appeared on behalf of Shoniber. Mr. Joseph Vitt was also

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<sup>1</sup> Since Entry of Default was entered on March 28, 2011, the motion should have been for Default Judgment only.

present at the hearing. Based on the filings and the non-opposition by PT&S, Shoniber's Motions to Set Aside Default is hereby granted.

## II. DISCUSSION

Shoniber's Motion to Set Aside Default is governed under FSM Civil Rule 55(c), which states: "Setting Aside Default. For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)."

The standard for setting aside an entry of default under Rule 55(c) is the liberal and less rigorous "good cause" standard rather than the more restrictive standard of excusable neglect for setting aside a default judgment under Rule 60(b). FSM Dev. Bank v. Gouland, 9 FSM Intrm. 375, 377-78 (Chk. 2000). The "good cause" threshold for Rule 55(c) relief is lower, ergo more easily overcome, than that which obtains under Rule 60(b) and the trial court should not read "good cause" too grudgingly. This more flexible approach reflects a policy decision that a default judgment should enjoy a greater degree of finality and, therefore, should be more difficult to disturb than a mere default. *Id.*

Because of the strong policies favoring resolution on the merits, the trial court has only a narrow scope of discretion, so that in a close case, a trial court should resolve its doubts in favor of a party seeking relief from the entry of a default. *Id.* at 378-79.

Here, the affidavit of Shoniber is attached in support of the Motion to Set Aside Default. In the affidavit, Shoniber states that upon receiving the Complaint in 2011, she visited attorney Martin Jano for assistance. Aff. of Shoniber at 1. Jano told Shoniber that he is not admitted to practice in the FSM Supreme Court, and that he would seek the assistance of the MLSC to represent Shoniber in this matter. *Id.* Based on this advice, Shoniber left Pohnpei, only to return a few years later to find that she was in default. Aff. of Shoniber at 2.

In consideration of the evidence provided by defendant, and the non-opposition by the plaintiff, the court finds that the defendant has met the good cause standard to set aside the entry of default in this matter.

## III. CONCLUSION

The defendant's Motion to Set Aside Entry of Default is HEREBY GRANTED. The Defendant shall file an Answer to the plaintiff's Complaint within ten (10) days of the entry of this Order. IT IS FURTHER ORDERED that the parties shall file a joint submission on the following deadlines: 1) Completion of Discovery; 2) Filing of all Pretrial Motions and Oppositions. A date for hearing on pretrial motion will be set, if needed, once have been filed. The joint submission shall be filed no later than November 28, 2014.

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