

DISTRICT COURT, DENVER COUNTY, STATE OF COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED: January 17, 2020 4:25 PM FILING ID: 8C7202FFDF915 CASE NUMBER: 2019CV33374
<b>Plaintiff:</b> HARVEY SENDER, as Receiver for Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC.  v.  <b>Defendants:</b> RUSSELL BECKER, JOSEPH J. PEIRCE, and KEN STOLTZFUS.	▲ COURT USE ONLY ▲
<u>Attorneys for Defendant Russell Becker:</u> Jason B. Wesoky, Reg. No. 34241 Darling Milligan PC 1331 17th Street, Suite 800 Denver, CO 80202 Phone: (303) 623-9133 Fax: (303) 623-9129 E-mail: <a href="mailto:jwesoky@darlingmilligan.com">jwesoky@darlingmilligan.com</a>	Case No.: 2019CV033374  Division: 424
<b>UNOPPOSED MOTION TO SET ASIDE ENTRY OF DEFAULT</b>	

Defendant, Russell Becker (“Becker”), through undersigned counsel, hereby moves this Court pursuant to C.R.C.P. 55(c) to vacate and set as the Default entered against him, and in support thereof states as follows:

Conferral pursuant to C.R.C.P. 121 § 1-15(8) – Counsel for Becker conferred with counsel for Plaintiff via telephone on January 14, 2020, explaining the basis for this motion. Plaintiff does not oppose the relief requested herein.

1. Plaintiff Harvey Sender, as Receiver for Gary Dragul, GDA Real Estate Services, LLC, and GDA Real Estate Management, LLC filed this action on August 30, 2019.

2. Defendant Becker was served on September 9, 2019. Plaintiff filed the Affidavit of Service on October 1, 2019.

3. On November 21, 2019, the Court entered default judgment against Defendant Becker.

4. C.R.C.P. 55(c) authorizes the court to set aside an entry of default for “good cause shown.” The good cause required under Rule 55(c) “poses a lesser standard for the defaulting party than the excusable neglect which must be shown for relief from judgment under” C.R.C.P. 60(b). *Pinson v. Equifax Credit Info. Servs., Inc.*, 316 F. Appx. 744, 750 (10th Cir. 2009). Thus, “[t]he standard for setting aside an entry of default under Rule 55(c) is fairly liberal because the preferred disposition of any case is upon its merits and not by default judgment.” *Crutcher v. Coleman*, 205 F.R.D. 581, 584 (D. Kan. 2001) (internal quotation omitted).

5. The Entry of Default in this matter should be set aside under C.R.C.P. 55(c).

6. Mr. Becker is 76 years old and has experienced some significant medical issues over the past several months which prevented him from being able to timely and effectively respond to the Complaint.

7. Mr. Becker has been experiencing profound muscle weakness, shortness of breath, and dizziness. These issues prevented him from even walking 20 yards, he fell several times, and had hand-rails and grab bars installed in his home. The

installation of those fall-prevention devices occurred in October 2019, shortly after he was served with the Complaint.

8. In addition, Mr. Becker has experienced disorientation, confusion, and difficulty focusing, which impaired his ability to think clearly and take action to retain counsel and respond to the Complaint.

9. As a result of this symptomology, Mr. Becker has undergone at least 10 different medical tests and doctors' visits between August 20, 2019 and December 26, 2019, including two CT scans, a sleep study, blood tests, pulmonary tests, and ; endoscopies; colonoscopy; lung volume testing; pulmonary testing; a sleep study; and myriad blood tests.

10. He has been under the care of Dr. Alisha Parada at UNM Hospital in Albuquerque and Drs. Yaw Adjeu-Poku and Sean Mazur at the New Mexico Heart Institute.

11. Mr. Becker's medical issues constitute excusable neglect under C.R.C.P. 60(b)(1) as he has not simply been negligent or ignored the Complaint. These medical problems are unforeseen circumstances that caused an otherwise prudent person to overlook his responsibility to respond to the Complaint.

12. Mr. Becker asks this Court to set aside the default judgment, which was entered less than two months' ago, so that he can address these claims on their merits.

WHEREFORE, Defendant Russell Becker asks this Court to enter an order setting aside the entry of default, permitting him to answer or otherwise respond to the Complaint, and grant such other relief the Court deems just.

Respectfully submitted this 17<sup>th</sup> day of January 2020.

DARLING MILLIGAN PC

*/s/ Jason B. Wesoky*  
Jason B. Wesoky, Reg. No. 34241  
*Attorneys for Plaintiff*

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 17<sup>th</sup> day of January 2020, a true and correct copy of the foregoing **MOTION TO SET ASIDE DEFAULT** was filed and served via Colorado Court E-Filing or by USPS postage prepaid upon the following parties:

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*In accordance with C.R.C.P. Rule 121 §1-26(7), a printed copy of this document with original or scanned signatures is being maintained by the filing party and will be made available for inspection by other parties or the court upon request.*