

IN THE CIRCUIT COURT OF THE CITY OF ST. LOUIS
STATE OF MISSOURI
ASSOCIATE CIRCUIT DIVISION

STATE OF MISSOURI,)	
)	
Plaintiff,)	
)	Cause No. 22942-00764
vs.)	
)	Division 27
JOHN GREEN,)	
)	
Defendant.)	

ORDER/JUDGMENT

Defendant's Motion to Set Aside Default Judgment of Seizure Assets was called for hearing before this Court on 11/17/2009. Plaintiff was present by Assistant Circuit Attorney Bradley Elkin. Defendant was present in person and by his attorney Steve D. Brooks. Testimony and argument were heard on Defendant's Motion.

Defendant filed his Motion to Set Aside on July 10, 2009 asking the Court to set aside a Default Judgment entered on June 28, 1994. That Default Judgment ordered that money seized from Defendant on February 11, 1994 incident to a lawful arrest and search was forfeited. The Judgment further ordered the St. Louis Police Department to transfer the funds formerly belonging to the Defendant to the St. Louis City Public Schools, pursuant to the Criminal Activity Forfeiture Act. Defendant's Motion does not delineate the Missouri Supreme Court Rule under which the Motion is brought, thus, the Court will consider Defendant's Motion under Rule 74.06(b), Rule 74.05(d) and Rule 74.06(d).

Missouri Supreme Court Rule 74.06(b) permits relief from a judgment based upon mistake, inadvertence, surprise, excusable neglect, fraud, misrepresentation or misconduct of an adverse party, or if the judgment is irregular, void or satisfied.

Rule 74.06(b). Any motion for relief based upon Rule 74.06(b) must be filed within one (1) year. Rule 74.06(c); Mathers v. Allstate Insurance Company, 265 S.W.3d 387, 390 (MoApp WD 2008).

Alternatively, Missouri Supreme Court Rule 74.05(d) provides that a party moving to set aside a default judgment must (1) file his motion within a reasonable time, (2) show a meritorious defense and (3) show good cause for his failure to answer the original summons. Rule 74.05(d). Mathers at 390. A motion based upon this rule must be filed within one (1) year after entry of the default judgment. Rule 74.05(d). Mathers at 390.

Because Defendant filed his Motion to Set Aside more than fifteen (15) years after entry of the default judgment, Rule 74.06(b) and Rule 74.05(d) do not allow for the setting aside of the default judgment. Thus, Defendant's Motion to Set Aside, with regard to Rule 74.06(b) or Rule 74.05(d) as its basis, is denied.

The final basis for seeking a set aside of the default judgment is the equitable power of the Court for relief from judgment under Rule 74.06(d). See Mathers at 390; Cody v. Old Republic Title Co., 156 S.W.3d 782, 784 (MoApp ED 2004). An independent action in equity to set aside a default judgment must be based on extrinsic fraud, or fraud on the Court. Mathers at 390; Cody at 784. Extrinsic fraud is "fraud that induced a party to default or to consent to judgment against him." Mathers at 390; Cody at 784; State ex rel. Lowry v. Carter, 178 S.W.3d 634, 637-638 (MoApp WD 2005). Further, a party must allege and demonstrate his absence of fault, neglect or inattention to the case. Mathers at 390; Reding v. Reding, 836 S.W.2d 37, 43 (MoApp SD 1992). "The defaulting party is not entitled to equitable relief where that party is chargeable with

neglect.” Mathers at 390; See also Massa v. Anderson, 691 S.W.2d 496, 497 (MoApp ED 1985). Extrinsic fraud must be established by clear, strong, cogent and convincing evidence and the moving party must demonstrate “that he himself was free from fault, neglect or inattention to his case.” Orrock v. Crouse Realtors, Inc., 813 S.W.2d 929, 932 (MoApp ED 1991). See also Thompson v. Columbia Mutual Insurance Co., 820 S.W.2d 626, 630-631 (MoApp SD 1991).

Defendant presented evidence at the hearing that in approximately October of 1994, Assistant Circuit Attorney Phillipa Barrett advised him, in writing, that he could claim the seized money one year thereafter, i.e. in October of 1995. On June 28, 1994, Rick Courtney of Lashly & Baer, P.C., acting as a Special Assistant Circuit Attorney, obtained a default judgment in which the seized money was forfeited and transferred to the St. Louis City Public Schools. On October 25, 1995, Defendant obtained a letter from ACA Phillipa Barrett authorizing the release of the seized money to Defendant. Defendant inquired at that time about return of his money and was advised that the money had already been forfeited and given to the school system. Defendant testified that he continued to inquire about the return of the money, but did not contact ACA Barrett or file any motions or other actions with the Court. It was not until 14 years after the anticipated release date of the money that Defendant filed the current Motion to Set Aside.

Based upon the evidence presented, the Court finds that Defendant failed to prove extrinsic fraud by clear, strong, cogent and convincing evidence. Furthermore, the court finds that Defendant was inattentive to this case by failing to take legal action until 14

years after learning of the forfeiture of the money. Defendant's Motion to Set Aside Default Judgment of Seizure Assets, with regard to Rule 74.06(d) as its basis, is denied.

Defendant's Motion to Set Aside Default Judgment of Seizure Assets is denied in all respects.

SO ORDERED:

THERESA COUNTS BURKE
Associate Circuit Judge, Division 27

Dated: December 2, 2009

cc: Bradley Elkin, ACA
Steve D. Brooks, Attorney for Defendant