

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF CONNECTICUT  
NEW HAVEN DIVISION

<p>In re: THORNTON &amp; CO., INC., <i>Debtor</i></p>	:	<p>Case No.: 15-21416 (AMN) Chapter 7</p>
<p>BONNIE C. MANGAN, TRUSTEE FOR THE BANKRUPTCY ESTATE OF THORNTON &amp; CO., INC., <i>Plaintiff</i></p>	:	<p>Adv. Pro. No. 17-02048 (AMN)</p>
<p>v. NEXUS RESIN GROUP, LLC <i>Defendant</i></p>	:	<p>Re: ECF No. 7, 12, 15, 16</p>

**ORDER GRANTING MOTION TO VACATE DEFAULT JUDGMENT**

Before the court is a motion (the “Motion”) filed by the defendant, Nexus Resin Group, LLC (“Nexus”), seeking an order vacating the default judgment entered against Nexus on March 6, 2018, pursuant to Fed.R.Civ.P. 55(c) and 60(b). AP-ECF No. 15.<sup>1</sup> For the reasons that follow, including that Nexus’s default was not willful, that Nexus has asserted the existence of meritorious defenses, and that there is an absence of prejudice, the Motion is granted and the default judgment is vacated.

**I. PROCEDURAL HISTORY**

On August 4, 2017, Bonnie C. Mangan, the Chapter 7 Trustee (the “Trustee”) for the Bankruptcy Estate of the debtor, Thornton & Co., Inc. (“Thornton”), commenced this adversary proceeding against Nexus by complaint (the “AP Complaint”) seeking, pursuant

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<sup>1</sup> All references to documents filed in this adversary proceeding shall be cited as AP-ECF No. \_\_\_. Citations to documents filed in the chapter 7 bankruptcy proceeding of the debtor, Thornton & Co., Inc. shall be cited as ECF No. \_\_\_.

to 11 U.S.C. §§ 547, 550, and 551, to avoid and recover as a preferential transfer the amount of One Hundred and Seven Thousand, Two Hundred and Seventeen (\$107,217.00) Dollars. AP-ECF No. 1. The Trustee sought to disallow all claims of Nexus pursuant to 11 U.S.C. § 502(d). AP-ECF No. 1. Nexus failed to appear and plead to the complaint and on October 11, 2017, the Clerk of the Court issued an Entry of Default. AP-ECF No. 7. Thereafter, on March 6, 2018, the court granted the Trustee's motion for default judgment and entered a judgment against Nexus for One Hundred Seven Thousand Two Hundred Seventeen (\$107,217.00) Dollars. AP-ECF No. 12.

Three days later, Attorney Michael Bonnano appeared as counsel for Nexus and filed the instant Motion to set aside the entry of default judgment. AP-ECF No. 15. In the motion, Nexus asserted that the court should vacate the default judgment because it only very recently became aware of the adversary complaint and proceeding, it has a meritorious defense to the complaint, and the Trustee will not suffer any prejudice as the judgment entered only three days earlier. AP-ECF No. 15. The Trustee objected to the Motion asserting that Nexus failed to adequately account for why it failed to receive notice of the adversary proceeding and complaint and failed to establish with sufficient evidence that it has a meritorious defense to the Trustee's complaint. AP-ECF No. 16.

## **II. APPLICABLE LAW**

Pursuant to Fed.R.Civ.P. 55(c), made applicable to this adversary proceeding by Fed.R.Bankr.P. 7055, the court may set aside the entry of a default for good cause and may set aside a default judgment under Rule 60(b). Rule 60(b)(1) provides that a court may vacate a judgment on the basis of "mistake, inadvertence, surprise, or excusable neglect. In determining whether to vacate a default judgment, courts consider "(1)

whether the default was willful, (2) whether the defendant demonstrates the existence of a meritorious defense, and (3) whether, and to what extent, vacating the default will cause the nondefaulting party prejudice.” *New York v. Green*, 420 F.3d 99, 108 (2d Cir. 2005)(citing *State Street Bank and Trust Co. v. Inversiones Errazuriz Limitada*, 374 F. 3d 158, 166-67 (2d Cir. 2004). “[W]illfulness in the context of a judgment by default requires ‘something more than mere negligence,’ such as ‘egregious or deliberate conduct’ ...” *Green*, 420 F.3d at 108 (citing *Am. Alliance Ins. Co., Ltd. v. Eagle Ins. Co.*, 92 F.3d 57, 60 (2d Cir.1996). “In order to make a sufficient showing of a meritorious defense in connection with a motion to vacate a default judgment, the defendant need not establish his defense conclusively, but he must present evidence of facts that, if proven at trial, would constitute a complete defense.” *State St. Bank*, 374 F.3d at 167 (citing *S.E.C. v. McNulty*, 137 F.3d 732, 740 (2d Cir. 1998)); see also *United States v. Myers*, 236 F. Supp. 3d 702, 707 (E.D.N.Y. 2017)(“A defense is meritorious if it is good at law so as to give the factfinder some determination to make.”)(quoting *Am. Alliance Ins. Co.*, 92 F.3d at 61). “These criteria must be applied in light of the Second Circuit’s ‘strong preference for resolving disputes on the merits.’ *Schlatter v. China Precision Steel, Inc.*, 296 F.R.D. 258, 260 (S.D.N.Y. 2013)(quoting *Brien v. Kullman Indus., Inc.*, 71 F.3d 1073, 1077 (2d Cir. 1995).

### **III. DISCUSSION**

In the Motion, Nexus requests the court find that its failure to appear in or receive notice of this adversary proceeding was the result of excusable neglect. In support of this argument, Nexus attached affidavits from two of its members, attesting that prior to March 1, 2018, neither of the members had received notice of the adversary proceeding. See

Affidavits of Ryan Keating and Ross Smith, AP-ECF No. 15. Nexus admitted that it was unable to explain why prior to March 1, 2018, the pleadings or notices sent by the Trustee or the court were not received by or forwarded to Nexus or one of its members. AP-ECF No. 15.

The Trustee argued that Nexus's failure to explain why notice of AP Complaint was not received amounts to a mere denial of receipt that is insufficient to rebut the presumption of receipt. ECF No. 16. "[T]here is a presumption in this circuit that a mailed document is received three days after its mailing, when the person who mailed the document followed regular office practice and procedure or has actual knowledge of having mailed the document." *Tanasi v. CitiMortgage, Inc.*, 257 F.Supp.3d 232, 263 (D. Conn. 2017)(quoting *Meckel v. Continental Res. Co.*, 758 F.2d 811, 817 (2d Cir. 1985). "This presumption may be rebutted by admissible evidence, but 'the mere denial of receipt does not rebut that presumption.'" *Tanasi*, 257 F.Supp.3d at 263 (quoting *Meckel*, 758 F.2d at 817). Here, Nexus failed to provide any evidence that the Trustee failed to mail the AP Complaint or mailed it to incorrect addresses.<sup>2</sup> Therefore, the court agrees with the Trustee that Nexus failed to rebut the presumption of receipt.

However, even assuming that Nexus received notice of the AP Complaint, there is not enough evidence to demonstrate that Nexus *willfully* ignored the notice. Nexus could have been negligent or careless in handling the AP Complaint it received. Additionally, Nexus asserts that it is not transacting business and is in the process of winding up its operations. Moreover, within two weeks of learning of the adversary proceeding, Nexus

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<sup>2</sup> The court notes that the Trustee may have been aware that Ryan Keating's business address of 37 Water Street, Mystic, Connecticut may not be operable as the Trustee admits that in July of 2017, the preference demand letter sent to that address was returned by the U.S. Postal Service undelivered. See ECF No. 16, ¶ 2.

retained counsel and filed the instant Motion, thus suggesting that the failure to appear and defend was not the result of a deliberate act taken to frustrate the proceeding. Therefore, the court finds that Nexus's conduct was not willful because of the lack of evidence of willful conduct, the short amount of time this adversary proceeding has been pending, and given Nexus's prompt actions after actual notice of the AP Complaint.

With regard to the existence of a meritorious defense, Nexus asserted that it might have two defenses to the Trustee's preferential transfer claim. First, Nexus claimed that pursuant to § 547(c)(1), any alleged transfer was a contemporaneous exchange for new value. Secondly, Nexus advanced it has a defense pursuant to § 547(c)(2) that any such transfer was made in the ordinary course of business of Thornton and Nexus. The Affidavit of Ryan Keating asserted that Thornton, had an ongoing business relationship, it was the ordinary course of business for Nexus and Thornton to buy and sell resin from each other, and in exchange for the alleged payment Thornton would have received resin material. While this court does not need to determine whether Nexus will prevail upon any of the alleged defenses, it finds that the proposed defenses either assail an element of the cause of action(s) or raise valid affirmative defenses set forth in the applicable avoidance statutes. Each alleged defense also appears to be based upon colorable arguments from the facts asserted in the Affidavit of Ryan Keating. Accordingly, at this stage, Nexus has satisfied its burden of demonstrating the existence of a meritorious defense.

The Trustee does not claim that it will suffer prejudice if the default judgment is vacated and the court notes that the instant Motion was filed a mere three days following the entry of the default judgment.

In light of the general preference for deciding cases on the merits and after consideration of the lack of willful default, the absence of prejudice, and the assertion of meritorious defenses, the court concludes that the factors weigh in favor of vacating the default judgment.

**NOW THEREFORE**, it is hereby

**ORDERED**, that the Order Granting the Motion for Default Judgment, ECF No. 12 and the Clerk's entry of default, ECF No. 7, are VACATED; and it is further

**ORDERED**, that, on or before April 13, 2018, Nexus shall file a response to the Trustee's Adversary Proceeding Complaint; and it is further,

**ORDERED**, that, on or before April 20, 2018, the parties shall meet and confer and file a Rule 26f Report; and it is further

**ORDERED**, that, on April 24, 2018, at 2:00 p.m., a pre-trial conference shall be held at the United States Bankruptcy Court, 157 Church Street, 18<sup>th</sup> Floor, New Haven, Connecticut.

Dated on April 3, 2018, at New Haven, Connecticut.

*Ann M. Nevins*  
United States Bankruptcy Judge  
District of Connecticut

