

2021 WL 3417955

Only the Westlaw citation is currently available.

United States District Court, D. Arizona.

WILLIAMS LAW GROUP PLLC, et al., Plaintiffs,

v.

AMERICAN ARBITRATION ASSOCIATION, et al., Defendants.

No. CV-21-00149-PHX-GMS

|
Signed 07/26/2021

|
Filed 07/27/2021

Attorneys and Law Firms

Andrew Williams, Pro Hac Vice, Williams Law Group, South Miami, FL, for Plaintiffs.

Maureen Beyers, Michael J. Farrell, Beyers Farrell PLLC, Phoenix, AZ, for Defendant American Arbitration Association.

Ian Abraham Abaie, Pravati Capital LLC, Scottsdale, AZ, for Defendant Pravati Credit Fund III LP.

ORDER

G. Murray Snow, Chief United States District Judge

*1 Pending before the Court is Defendants American Arbitration Association (“AAA”), Janet S. Weinstein PC (“Weinstein Firm”), and Janet S. Weinstein's Motion to Dismiss. (Doc. 17.) Also before the Court is Defendant Pravati Credit Fund III, L.P.'s (“Pravati”) Motion to Set Aside Clerk's Entry of Default, (Doc. 27), and Plaintiffs The Williams L.G., P.L.L.C. (“WLG”) and Andrew Williams’ (collectively, “Plaintiffs”) motions to strike, (Docs. 38, 40). For the following reasons, the Motion to Dismiss is granted, the Motion to Set Aside Clerk's Entry of Default is granted, and the motions to strike are denied.¹

BACKGROUND

WLG and Pravati are parties to an agreement (the “Agreement”), in which Pravati agreed to assist WLG with its business growth and development. (Doc. 1 ¶ 11.) Issues later arose and Pravati filed a demand for arbitration. *Id.* ¶ 14. The AAA assigned the Weinstein Firm and Weinstein, an officer of the Weinstein Firm, to conduct the arbitration. *Id.* ¶ 21. Plaintiffs allege that Pravati commenced arbitration for improper purposes and that the AAA, the Weinstein Firm, and Weinstein violated Plaintiffs’ constitutional rights during the arbitration proceeding. *Id.* ¶¶ 31–68. Plaintiffs brought suit on January 27, 2021, alleging violation of procedural due process, substantive due process, the Arizona Constitution, abuse of process, and Arizona's usury laws.

Additionally, as relevant here, Plaintiffs filed proof of service, which stated that Pravati was served on January 28, 2021, on February 24, 2021. (Doc. 20-1.) Upon Plaintiffs’ application for entry of default, the Clerk of Court entered default as to Pravati on February 24, 2021. (Doc. 24.)

DISCUSSION

I. Motion to Dismiss

A. Legal Standard

To survive dismissal for failure to state a claim pursuant to [Federal Rule of Civil Procedure 12\(b\)\(6\)](#), a complaint must contain more than a “formulaic recitation of the elements of a cause of action”; it must contain factual allegations sufficient to “raise the right of relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quoting *Conley v. Gibson*, 355 U.S. 41, 47 (1957)). When analyzing a complaint for failure to state a claim, “allegations of material fact are taken as true and construed in the light most favorable to the non-moving party.” *Smith v. Jackson*, 84 F.3d 1213, 1217 (9th Cir. 1996). However, legal conclusions couched as factual allegations are not given a presumption of truthfulness, and “conclusory allegations of law and unwarranted inferences are not sufficient to defeat a motion to dismiss.” *Pareto v. F.D.I.C.*, 139 F.3d 696, 699 (9th Cir. 1998).

B. Analysis

Plaintiffs allege that Defendants AAA, Weinstein Firm, and Weinstein violated their procedural and substantive due process rights under the United States Constitution and their due process rights under Arizona's constitution. Plaintiffs must show state action to assert these violations. See *Cort v. Am. Arbitration Ass'n*, 795 F. Supp. 970, 973 (N.D. Cal. 1992) (“The protection of the Fourteenth Amendment extends only to scrutiny of state actions.”); *Dimond v. Samaritan Health Serv.*, 27 Ariz. App. 682, 684, 558 P.2d 710, 712 (1976) (“Article 2, Sec. 4 of the Arizona Constitution applies only to state action.”). Private arbitration proceedings, however, do not give rise to state action. See *Fed. Deposit Ins. Corp. v. Air Fla. Sys., Inc.*, 822 F.2d 833, 842 n.9 (9th Cir. 1987) (“[W]e do not find in private arbitration proceedings the state action requisite for a constitutional due process claim.”); *Tulsa Pro. Collection Servs., Inc. v. Pope*, 485 U.S. 478, 485 (1988) (“Private use of state-sanctioned private remedies or procedures does not rise to the level of state action.”). As Plaintiffs’ allegations arise from a private arbitration proceeding, there is no state action. Accordingly, Counts I, II, and III are dismissed with prejudice.

II. Motion to Set Aside Default²

A. Legal Standard

*2 [Federal Rule of Civil Procedure 55\(c\)](#) allows courts to set aside entry of default for “good cause.” Courts are given broad discretion when considering whether to set aside entry of default. *O'Connor v. Nevada*, 27 F.3d 357, 364 (9th Cir. 1994). In making its determination, courts consider “(1) whether the party seeking to set aside the default engaged in culpable conduct that led to the default; (2) whether it had no meritorious defense; or (3) whether reopening the default judgment would prejudice the other party.” *United States v. Signed Pers. Check No. 730 of Yubran S. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010) (internal quotation marks and alterations omitted). Generally, default judgments are strongly disfavored. *Meadows v. Dominican Republic*, 817 F.2d 517, 521 (9th Cir. 1987).

B. Analysis

The factors favor setting aside default. First, the Court does not find culpable conduct. “[A] defendant's conduct is culpable if he has received actual or constructive notice of the filing of the action and *intentionally* failed to answer.” *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 697 (9th Cir. 2001), *overruled on other grounds*, 532 U.S. 141 (2001). Pravati's counsel

Mr. Abaie declares that, at a hearing in the arbitration, he learned that Plaintiffs filed a lawsuit against AAA, Weinstein, and Pravati. (Doc. 36-1, Ex. M ¶ 4.) Upon learning this information, Mr. Abaie reviewed the docket and observed that no affidavit of service was on file pertaining to Pravati. *Id.* ¶ 5. Mr. Abaie asked the principals of Pravati Capital LLC whether they had received notice that Pravati was served and those principals denied such notice. *Id.* ¶ 6. Mr. Abaie continued to monitor the docket, and as of February 23, 2021, there was no indication on the docket that Pravati had been served. *Id.* ¶¶ 7–8. On February 24, 2021, Plaintiffs filed proof of service upon Pravati, which stated that Pravati had been served on January 28, 2021. (Doc. 20-1.) That same day, Plaintiffs filed application for entry of default, (Doc. 22), and the Clerk of Court entered default, (Doc. 24). Mr. Abaie declares that he filed a motion to set aside the default as soon as he discovered the entry of default. (Doc. 36-1, Ex. M ¶ 11.) Pravati filed the motion to set aside entry of default on March 5, 2021, a little over a week after default was entered. (Doc. 27.) Although the parties dispute whether process was served, the Court does not find, based on the facts provided, that culpable conduct led to the default.

Second, Pravati has demonstrated that it may have a meritorious defense to Plaintiffs' claims. The Agreement states that “[e]ach Party to this Agreement agrees that all Disputed Claims, which shall include any dispute, controversy or claim that may arise between or among them in connection with, arising out of, or otherwise relating to this Agreement ... shall be ... settled by binding arbitration.” (Doc. 27-1, Ex. A ¶ 21(a).) This clause makes it possible that Plaintiffs' abuse of process and usury claims, which refer to the Agreement, are subject to arbitration.

Finally, “[t]o prevent setting aside default, prejudice to a non-moving party must result in greater harm than simply delaying resolution of the case, rather, the standard is whether the non-movant's ability to pursue his claim will be hindered.” *FOC Fin. Ltd. P'ship v. Nat'l City Com. Cap. Corp.*, 612 F. Supp. 2d 1080, 1084 (D. Ariz. 2009) (internal quotations, alterations, and citation omitted). This lawsuit was filed on January 27, 2021, the Clerk of Court entered default on February 24, and Pravati moved to set aside default on March 5. As this case is in its infancy and Pravati promptly moved to set aside default, the Court does not find prejudice to Plaintiffs.

*3 As the factors favor Pravati, the motion to set aside default is granted.

CONCLUSION

For the reasons provided above, Counts I, II, and III are dismissed with prejudice. Additionally, Pravati has shown good cause for setting aside default, and Plaintiffs' motions to strike are denied.

Accordingly,

IT IS THEREFORE ORDERED that Defendants American Arbitration Association, Janet S. Weinstein PC, and Janet S. Weinstein's Motion to Dismiss (Doc. 17) is **GRANTED**. Counts I, II, and III are dismissed with prejudice.

IT IS FURTHER ORDERED that Defendant Pravati Credit Fund III, L.P.'s Motion to Set Aside Clerk's Entry of Default (Doc. 27) is **GRANTED**.

IT IS FURTHER ORDERED that Plaintiffs' Motion to Strike Defendant Pravati Credit Fund III, L.P.'s Reply In Support of Its Motion to Set Aside Clerk's Entry of Default, and Request for Attorney's Fees (Doc. 38) is **DENIED**.

IT IS FURTHER ORDERED that Plaintiffs' Motion to Strike Exhibit “B” from Defendant Pravati Credit Fund III, L.P.'s Response to Plaintiffs' Motion to Strike Defendant Pravati Credit Fund III, L.P.'s Reply in Support of Its Motion to Set Aside Clerk's Entry of Default, and Request for Attorney's Fees [DE 39], and Request for Attorney's Fees (Doc. 40) is **DENIED**.

All Citations

Slip Copy, 2021 WL 3417955

Footnotes

- 1 Plaintiffs and Defendants AAA, Weinstein Firm, and Weinstein requested oral argument. That request is denied because the parties have had an adequate opportunity to discuss the law and evidence and oral argument will not aid the Court's decision. *See Lake at Las Vegas Invs. Grp., Inc. v. Pac. Malibu Dev.*, 933 F.2d 724, 729 (9th Cir. 1991).
- 2 Plaintiffs' motion to strike Pravati's reply to the motion to set aside default, and motion to strike Exhibit B, which is attached to Pravati's response to Plaintiffs' motion to strike Pravati's reply, are denied. Plaintiffs have not shown that Pravati's short delay in filing its reply is sufficiently prejudicial. *See Cal. Dep't of Toxic Substances Control v. Alco Pac., Inc.*, 217 F. Supp. 2d 1028, 1033 (C.D. Cal. 2002) ("Given [motions to strike] disfavored status, courts often require a showing of prejudice by the moving party before granting the requested relief" (internal quotations and citation omitted)). Additionally, Plaintiffs' motion to strike Exhibit B is improperly filed. *See* L.R.Civ. 7.2(m)(2).

End of Document

© 2021 Thomson Reuters. No claim to original U.S. Government Works.