

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION
CIVIL MINUTES - GENERAL

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Case No. CV 04-4725 GPS (MANx)

Date: September 22, 2006

FILED
SEP 22 2006
CLERK

Title: Sholodge, Inc. v. Wells Fargo Foothill, Inc. et al.

PRESENT: THE HONORABLE GEORGE P. SCHIAVELLI, JUDGE

Krista Barrett
Courtroom Clerk

Rosalyn Adams
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFFS:

ATTORNEYS PRESENT FOR DEFENDANTS:

Eugene Bulso, Jr.
Boult, Cummings, Conners & Berry

Paul Leeds
Higgs, Fletcher & Mack

PROCEEDINGS: Evidentiary Hearing re: Defendant's Motion to Set Aside Default Judgment

On August 31, 2006, the Court conducted an evidentiary hearing to consider Defendant Trigild Services Inc.'s Motion to Set Aside the Default judgment. The Court heard testimony from (1) Carol Chen, the person who was allegedly served by Plaintiff, (2) Bill Hoffman, former president of Defendant, and (3) Gloria San Miguel, the licensed process server who allegedly served Ms. Chen. After hearing testimony and argument, the Court questioned whether there was a valid proof of service to constitute prima facie evidence that the service itself was valid and took the matter under submission.

After considering the parties' papers and the evidence presented at the hearing, the Court **GRANTS** Defendant's motion to set aside the default judgment for the reasons stated below.

Normally a party can make a prima facie case that service was valid by providing a proof of service. In this case, however, the proofs of service were substantially flawed and unreliable. Two separate proofs of service were provided to the clerk for entry of default [Dkt. ##72 and 73]. For the first proof of service [Dkt. #72], Plaintiff could not prove that Ms. San Miguel signed the document. Ms. San Miguel testified at the hearing that someone else signed the proof of service in July, 2005. Given the content of the proof of service, this revelation suggests the signer may have committed perjury. The Court is very concerned about this evidence and orders Plaintiff to notify the Court as to who signed this invalid proof of service. This is an extremely serious matter and may need to be referred to local law enforcement agencies for investigation.

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Initials of Deputy Clerk [Signature]

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Since the first proof of service was shown to be invalid, the Court is not willing to assume the second proof of service [Dkt. #73] is valid, especially when it was not authenticated on the record by Ms. San Miguel - although Plaintiff was afforded the chance to provide that authentication. Furthermore, the notes or "work order" that Ms. San Miguel said she made immediately after she allegedly served Ms. Chen have never been provided to the Court. Indeed, the second proof of service was dated months after the alleged service.

The lack of valid proof of service, coupled with Defendant's other evidence, is enough to show "procedural or jurisdictional irregularities," which are required under Rule 60(b)(4) of the Federal Rules of Civil Procedure to set aside a default judgment.

Accordingly, the Defendant's motion to set aside the default judgment is GRANTED.

IT IS SO ORDERED.