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Case No. 17-5-91-IC

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LINCOLN COUNTY  
DEPUTY

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF  
NEVADA, IN AND FOR THE COUNTY OF LINCOLN

\*\*\*\*\*

DARYL E. ENGEBREGSON, SR., )  
Plaintiff, )  
-vs- )  
WILLIAM H. BROWN, )  
Defendant. )

ORDER GRANTING MOTION TO  
SET ASIDE DEFAULT

SEVENTH JUDICIAL COURT  
MERLYN H. HOYT  
DISTRICT JUDGE  
WHITE PINE, LINCOLN AND EUREKA COUNTIES  
STATE OF NEVADA



The Defendant in the above-entitled action has made a Motion to Set Aside Default pursuant to N.R.C.P. Rule 55 (c) and Rule 60 asserting that because his Attorney, GEORGE D. FRAME, ESQ., was told by a deputy sheriff that the first service of summons in this case made on the 29th day of May, 1991, was "faulty" and that second service of summons was not made until the 10th day of June, 1991, and the time in which to respond was, therefore, the 30th day of June, 1991, and not the 19th day of June, 1991, this Court should set aside the Default Judgment by the County Clerk.

As the granting of a Motion to Set Aside under N.R.C.P. Rule 55 (c) or Rule 60 is addressed to the sound discretion of the trial court and there is a strong policy in favor of trial on the

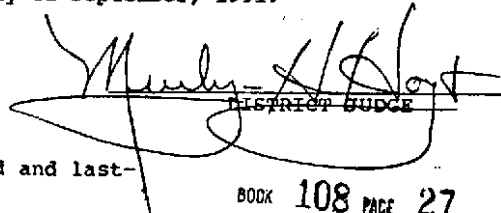
1 merits, the Court must grant the Defendant's Motion. See CULINARY  
 2 AND HOTEL SERVICE WORKS UNION v. HARGER, 76 Nev. 424, 357 P.2d 113  
 3 (1960) and HOTEL LAST FRONTIER CORP. v. FRONTIER PROPERTIES, INC.,  
 4 79 Nev. 150, 380 P.2d 293 (1963). Wide judicial discretion is given  
 5 to the Court in determining excusable neglect, and factors such as  
 6 prompt application to remove the judgment, absence of intent to  
 7 delay, lack of knowledge of procedural requirements and good faith  
 8 are to be used in making such a determination. See FAGIN v. FAGIN,  
 9 91 Nev. 794, 544 P.2d 415 (1975) and YOUCHUM v. DAVIS, 98 Nev. 484,  
 10 653 P.2d 1215 (1982).

11 In the case at bar, the Defendant has made prompt  
 12 application to set aside the Default Judgment, and states, by  
 13 affidavit, that the Motion is not made for purposes of delay and is  
 14 made in good faith. Moreover, as it appears, there is considerable  
 15 confusion as to why second service of process was required in this  
 16 case and resulting confusion as to the actual date a response was  
 17 required, the above-mentioned factors have been met and the Court  
 18 finds there was excusable neglect and mistake in this case.

19 Based on this finding and good cause appearing, therefor;

20 IT IS HEREBY ORDERED that the Motion to Set Aside Default  
 21 is granted and the Default Judgment by the County Clerk signed and  
 22 filed on the 19th day of July, 1991, is vacated.

23 DATED this 3rd day of September, 1991.

24   
 25 DISTRICT JUDGE  
 26

-2nd and last-

SEVENTH JUDICIAL COURT  
 MERLYN H. HOYT  
 DISTRICT JUDGE  
 WHITE PINE, LINCOLN AND EUREKA COUNTIES  
 STATE OF NEVADA



Lincoln County

COPY

This document to which this certificate is attached is a full, true and correct copy of the original, on file and of record in the County Clerks Office, Pioche Nevada.

In witness whereof, I have hereunto set my hand and affixed the Seal of the Seventh Judicial District of the County of Lincoln, State of Nevada, this 24th day of Nov 1993.

[Signature]  
Clerk  
[Signature]  
Deputy Clerk

101173

FILED AND RECORDED AT REQUEST OF  
William H. Brown

Nov. 24, 1993

7 10 MINUTES PAST 11 O'CLOCK  
P.M. IN BOOK 108 OF OFFICE  
RECORDS, PAGE 26 LINCOLN  
COUNTY, NEVADA.

[Signature]  
COUNTY CLERK