

STATE OF MAINE

KENNEBEC, ss.

SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-06-22

SL-211-9/8/06

STATE OF MAINE,

Plaintiff

v.

DECISION ON MOTION

JAMES EVANS, JR.,

Defendant

This matter comes before the court on the motion of defendant James Evans to set aside a default on his part. Mr. Evans presently lives in the Jacksonville, Florida area and, at his request, a hearing was conducted by telephone. After considering the pleadings and the argument presented during the hearing, the motion will be denied.

Facts

This matter arises from a Certificate of State Tax dated January 27, 2006, which certifies that Mr. Evans owes the State a total of \$14,450.66 plus interest accruing monthly, for tax years 1990, 1991, 1992 and 1993. Based on that certificate, the State brought a complaint for collection of the unpaid Maine income tax, which was filed with the court on February 1, 2006. The State initially had some difficulty in serving defendant Evans with the complaint and summons, but in-hand service was finally accomplished in Florida on May 3, 2006. Served along with the complaint was the summons which included the following information, "If you wish to oppose this lawsuit, you or your attorney **MUST PREPARE AND SERVE A WRITTEN ANSWER** to the attached complaint **WITHIN 20 DAYS** from the date this Summons was served on you." (emphasis in the original) The summons also contains the following:

IMPORTANT WARNING

IF YOU FAIL TO SERVE AND ANSWER WITHIN THE TIME STATED ABOVE . . . A JUDGMENT BY DEFAULT MAY BE ENTERED AGAINST YOU IN YOUR ABSENCE FOR THE MONEY DAMAGES OR OTHER RELIEF DEMANDED IN THE COMPLAINT.

According to the Rules of Civil Procedure and the warnings in the summons quoted above, Mr. Evans's answer was due on May 23, 2006. However, no timely answer having been filed, the plaintiff filed an "Affidavit and Request for Default and Default Judgment" on June 1, 2006. The default was entered on June 5, 2006, and the default judgment in the amount of \$14,450.66 was entered on June 9, 2006. Finally on June 12, 2006, Mr. Evans filed his answer. On July 3, 2006, Mr. Evans filed his motion to set aside the default, which is presently at issue.

The motion to set aside the default contains no explanation as to why the answer was filed almost three weeks late. During the oral presentation, Evans did cite a change of residence, personal difficulties and a lack of money to hire an attorney as general reasons why it has been difficult for him to concentrate on the State's claim. However, none of these factors constitute "good cause" which is the standard for granting the relief that is sought under M.R. Civ. P. 55(c).

In conclusion, for the reasons stated above, the entry will be:

Motion DENIED.

Dated: September 8, 2006



S. Kirk Studstrup
Justice, Superior Court

STATE OF MAINE - PLAINTIFF

SUPERIOR COURT

KENNEBEC, ss.

Docket No AUGSC-CV-2006-00022

Attorney for: STATE OF MAINE
SCOTT W BOAK - RETAINED 02/06/2006
ATTORNEY GENERAL OFFICE OF AG
111 SEWALL STREET
6 STATE HOUSE STATION
AUGUSTA ME 04333-0006

DOCKET RECORD

vs

JAMES EVANS JR - DEFENDANT
6934 RICHARDSON ROAD,
JACKSONVILLE FL 322091316

Filing Document: COMPLAINT
Filing Date: 02/01/2006

Minor Case Type: OTHER CIVIL

Docket Events:

02/06/2006 FILING DOCUMENT - COMPLAINT FILED ON 02/01/2006
Plaintiff's Attorney: SCOTT W BOAK
WITH ATTACHED CERTIFICATE OF STATE TAX ASSESSOR

02/06/2006 Party(s): STATE OF MAINE
ATTORNEY - RETAINED ENTERED ON 02/06/2006
Plaintiff's Attorney: SCOTT W BOAK

04/05/2006 Party(s): STATE OF MAINE
MOTION - MOTION FOR ENLARGEMENT OF TIME FILED ON 04/05/2006
Plaintiff's Attorney: SCOTT W BOAK
STATE OF MAINE'S MOTION FOR ENLARGMENT OF TIME TO FILE RETURN OF SERVICE WITH INCORPORATED
MEMORANDUM OF LAW, AFFIDAVIT OF SCOTT W. BOAK AND PROPOSED ORDER ON STATE OF MAINE'S
MOTION FOR ENLARGEMENT OF TIME TO FILE RETURN OF SERVICE.

04/10/2006 Party(s): STATE OF MAINE
MOTION - MOTION FOR ENLARGEMENT OF TIME GRANTED ON 04/06/2006
DONALD H MARDEN , JUSTICE
COPIES TO PARTIES/COUNSEL
RETURNS OF SERVICE EXTENDED TO 6/30/06.

TIME TO FILE

05/17/2006 Party(s): STATE OF MAINE
SUMMONS/SERVICE - CIVIL SUMMONS FILED ON 05/17/2006
Plaintiff's Attorney: SCOTT W BOAK

05/17/2006 Party(s): STATE OF MAINE
SUMMONS/SERVICE - CIVIL SUMMONS SERVED ON 04/13/2006
SERVICE OF JAMES EVANS JR

06/01/2006 Party(s): STATE OF MAINE
SUMMONS/SERVICE - PROOF OF SERVICE FILED ON 06/01/2006
Plaintiff's Attorney: SCOTT W BOAK
OUT OF STATE RETURN OF SERVICE AMENDED AFFIDAVIT
JAMES EVANS JR

SERVICE OF

06/01/2006 Party(s): STATE OF MAINE
SUMMONS/SERVICE - PROOF OF SERVICE SERVED ON 05/03/2006

06/01/2006 Party(s): STATE OF MAINE
MOTION - AFFID & REQUEST DEFAULT/JUDG FILED ON 06/01/2006
Plaintiff's Attorney: SCOTT W BOAK

06/05/2006 Party(s): JAMES EVANS JR
ORDER - DEFAULT ENTERED ON 06/05/2006
NANCY DESJARDIN , CLERK II
DEFAULT ENTERED AGAINST JAMES EVANS JR. COPIES TO
PARTIES/COUNSEL

06/13/2006 Party(s): JAMES EVANS JR
RESPONSIVE PLEADING - ANSWER FILED ON 06/12/2006

06/13/2006 FINDING - JUDGMENT DETERMINATION ENTERED ON 06/09/2006
NANCY DESJARDIN , CLERK II
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO
PARTIES/COUNSEL

ORDER - DEFAULT JUDGMENT ENTERED ON 06/09/2006
NANCY DESJARDIN , CLERK II
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO
PARTIES/COUNSEL
Judgment entered for STATE OF MAINE and against JAMES EVANS JR in the amount of \$14450.66.

06/13/2006 FINDING - FINAL JUDGMENT CASE CLOSED ON 06/13/2006

07/03/2006 Party(s): JAMES EVANS JR
MOTION - MOTION SET ASIDE DEFAULT JUDG FILED ON 07/03/2006
AND ACCEPT ANSWER AND AFFIRMATIVE DEFENDSES. S/EVANS, PRO SE CERTIFICATE OF
SERVICE.

07/11/2006 Party(s): STATE OF MAINE
OTHER FILING - OPPOSING MEMORANDUM FILED ON 07/11/2006
Plaintiff's Attorney: SCOTT W BOAK
STATE OF MAINE'S OPPOSITION TO DEFENDANT'S MOTION TO SET ASIDE DEFAULT AND ACCEPT ANSWER
AND AFFIRMATIVE DEFENSES.

08/29/2006 Party(s): JAMES EVANS JR
MOTION - OTHER MOTION FILED ON 08/29/2006
MOTION TO APPEAR BY TELEPHONE.

09/11/2006 Party(s): JAMES EVANS JR
MOTION - MOTION SET ASIDE DEFAULT JUDG DENIED ON 09/08/2006
S KIRK STUDSTRUP , JUSTICE
COPIES TO PARTIES/COUNSEL

09/11/2006 ORDER - COURT ORDER ENTERED ON 09/08/2006
S KIRK STUDSTRUP , JUSTICE
ORDERED INCORPORATED BY REFERENCE AT THE SPECIFIC DIRECTION OF THE COURT. COPIES TO
PARTIES/COUNSEL COPIES MAILED TO
GARBRECHT LAW LIBRARY, DONALD GOSS AND DEBORAH FIRESTONE

A TRUE COPY

ATTEST: _____
Clerk