

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS

IN RE:)
)
STACY HARDEN,) Bankruptcy Case No. 95-30780
)
Debtor.)
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)
CHEVY CHASE BANK,)
)
Plaintiff,)
)
vs.) Adversary Case No. 95-3172
)
STACY HARDEN,)
)
Defendant.)

OPINION

This matter having come before the Court on a Motion to Vacate; the Court, having reviewed said Motion and being otherwise fully advised in the premises, makes the following findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure.

On August 30, 1995, a pre-trial hearing was held wherein an Order was entered setting this matter for trial on October 2, 1995, at 9:00 A.M. One provision of the August 30, 1995, pre-trial Order, among others, stated that: "This case will only be continued and removed from the trial docket for good cause shown. . ." It is under this standard that the Court considers the Plaintiff's Motion to Vacate.

On October 2, 1995, this case was called for trial at 9:00 A.M. The Defendant appeared by counsel, Bryan McCarthy; however, the Plaintiff failed to appear. The Court was informed by Counsel McCarthy that counsel for Plaintiff had indicated that he was on a flight from

Chicago that had left at 7:00 A.M. and that he would be late for the trial. This same information was relayed to the Court by the Courtroom Deputy. At approximately 9:22 A.M., this case was again called for trial, and the Plaintiff was not present. The Court, having had no further word from the Plaintiff, found that the case should be dismissed for failure of the Plaintiff to prosecute.

In support of its previous Order of dismissal in this case and denial of the instant Motion to Vacate, the Court would state that it finds that the Plaintiff has not shown good cause why this case should be reinstated and re-entered on the trial docket. It is apparent that Plaintiff's counsel was aware at least three days prior to trial that he would be unable to secure a timely flight from Chicago on the morning of the trial. Rather than attempt to secure a flight the night before the trial or to request a continuance, Plaintiff's counsel chose to excuse his absence by an announcement to Defendant's counsel and to a Court Clerk that he would be late, although he would arrive at some time during the morning of October 2. Further, the Court notes that, in his Motion to Vacate, Plaintiff's counsel asserts that he arrived in the Courtroom at 9:20 A.M. According to Court records, the Court was still in session at 9:20 A.M. As such, the Court must find that the assertion in the Motion to Vacate as to the time of arrival of Plaintiff's counsel is incorrect.

In conclusion, the Court finds that, given the undisputed facts taken as a whole, the Plaintiff has failed to show good cause for its failure to timely appear at the trial which was scheduled more than 30 days in advance.

ENTERED: OCTOBER 24, 1995.

/s/ GERALD D. FINES
United States Bankruptcy Judge