

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF UTAH

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In re ) Bankruptcy Case No. 82C-00320  
J. C. MUNRO, )  
Debtor. ) Civil Proceeding No. 82PC-0287  
INTERMOUNTAIN CONSTRUCTION, )  
INC., a Utah corporation, )  
Plaintiff. )  
-vs- )  
J. C. MUNRO, ) MEMORANDUM DECISION AND ORDER  
Defendant. ) ON MOTION TO SET ASIDE ORDER  
OF DISMISSAL

This action was dismissed when plaintiff's counsel failed to respond to the court's order requiring plaintiff to show cause why the action should not be dismissed for a prolonged lack of prosecution. Plaintiff's counsel relies on his own affidavit, which says he did not see the court's order until after the action had been dismissed, to establish excusable neglect or other cause under Rule 60(b) for relief from the order of dismissal. Excusable neglect has not been shown. Plaintiff's counsel shows only that he did not see the order until it was too late, not that his office did not receive the court's order in time for him to respond. Because the clerk's mailing certificate shows that the order was mailed to plaintiff's counsel in time for a response, the court presumes that the order was recieved on

time. Although counsel's failure to see the order was the result of neglect, that neglect is not excusable. "Where a litigant's own internal procedures are the cause of a failure to comply with proper legal procedure courts generally refuse to grant relief from the consequences of the lack of compliance." In re Bidby, 7 B.C.D. 84, 85 (N.D. Ga. 1980).

The court's orders should not be set aside lightly. By clearing away stagnant litigation, orders of dismissal for failure to prosecute aid not only debtor defendants seeking to get on with life but also others who must compete for scarce time on the court's calendar.

Debtor's counsel, however, has not opposed the motion to set aside the dismissal. For that reason and on the conditions stated below the court will grant the motion in order to prevent the neglect of plaintiff's counsel or of the office personnel of plaintiff's counsel from barring plaintiff's possibly meritorious claim.

IT IS THEREFORE ORDERED that the dismissal entered in this matter is vacated. Under Rule 60(b), the court may set aside a dismissal "upon such terms as are just." In this case, those terms shall be as follows: (1) plaintiff's counsel is directed immediately to schedule a pre-trial scheduling conference with the Clerk of the Court, (2) plaintiff's counsel is directed to pay to defendant's counsel the sum of \$100.00 for his fees in attending that scheduling conference, and (3) should defendant

prevail at trial or on a motion for summary judgment, defendant's reasonable attorneys fees will be assessed against plaintiff and plaintiff's counsel.

DATED this 4 day of April, 1983.

BY THE COURT:

  
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GLEN E. CLARK  
UNITED STATES BANKRUPTCY JUDGE