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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re

GREGORY CHANDLER,

No. 01-13070

Debtor(s).

JEFFRY LOCKE,

Plaintiff(s),

v.

A.P. No. 03-1047

SUNAE CHANDLER,

Defendant(s).

Memorandum on Motion to Set Aside Default Judgment

Debtor Gregory Chandler is a lawyer and husband of defendant Sunae Chandler, an officer in the United States Naval Reserve. The court has denied Gegory’s discharge. In this adversary proceeding the Chapter 7 trustee in his case, Jeffry Locke, seeks a declaration that two parcels of real property and a vehicle are community property and should be sold to satisfy Gregory’s debts.

On March 4, 2003, Sunae was served at 13 Braun Court, Sausalito, California, which is her and Gregory’s proper address. She did not respond to the complaint, and her default was entered on May 19,

1 2003. The court entered a default judgment on October 28, 2003.

2 On November 10, 2003, Gregory filed a motion to set aside the default judgment on behalf of
3 Sunae. In his motion, he alleged that Sunae was not properly served and that she was entitled to
4 protection under the Soldiers' and Sailors' Civil Relief Act. He did not include a declaration or any
5 other evidence to support these allegations. The court accordingly put the matter over so that a
6 declaration could be filed.

7 On January 14, 2004, a declaration was filed. However, it was obvious that the declaration had
8 been signed by Gregory himself, forging his wife's signature. The court accordingly set an evidentiary
9 hearing to hear from Sunae herself.

10 After listening to Sunae, it was clear that she was properly served at her dwelling house as
11 required by FRBP 7004(b)(1); she may have been temporarily absent to care for her mother, but that
12 address was her usual place of abode.

13 It appears that this matter is properly governed by the Servicemembers Civil Relief Act of 2003
14 rather than the earlier law cited by Chandler. Under § 201(g)(1) of that act, a default judgment against a
15 servicemember shall be set aside if the servicemember was materially affected by reason of military
16 service in making a defense, the servicemember has a meritorious defense, and the judgment was entered
17 during a period of military service or within 60 days after release from service. Section 101(3) defines
18 "period of military service" as when the servicemember enters military service; § 101(2)(A)(i) defines
19 "military service" as active duty.

20 Since it appears that Sunae was on active duty within 60 days before the default judgment was
21 entered, the court will grant her motion and set aside the default judgment. The court is giving Sunae the
22 benefit of the doubt as to whether her service affected her ability to defend, as it is more likely that this
23 situation is the result of machinations by her husband than fulfillment of her military obligations. It does
24 appear that Sunae may have a meritorious defense if the deeds submitted by Gregory are genuine.

25 For the foregoing reasons, the motion to set aside the default will be granted. Sunae shall have
26 20 days from the date of this memorandum to file an answer. A scheduling conference will be held on

1 March 29, 2004, at 2:00 P.M. A separate order will be entered.

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3 Dated: February 8, 2004

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Alan Jaroslovsky
U.S. Bankruptcy Judge

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