IN THE CHANCERY COURT, STATE OF WYOMING

2025 WYCH 7

G BAR S HEAVY HAUL, LLC, A Wyoming Limited Liability Company, RIATTA RENTALS, LLC, A Wyoming Limited Liability Company, Plaintiffs, v. CHIPCORE, LLC, A Wyoming Limited Liability Company, WYLEASE, LLC, A Colorado Limited Liability Company, PRESTIGE ENERGY, LLC, A Colorado Limited Liability Company, Defendants.	Case No. CH-2025-0000009

Order Setting Aside Entry of Default

[¶1] This matter is before the court on *Defendant Wylease, LLC's Motion to Set Aside Clerk's Entry of Default* filed June 2, 2025 (FSX No. 76382952). The motion pits two priorities against each other: (1) enforcing deadlines and (2) deciding cases on the merits. Wylease answered four days late—two of those days falling on a weekend—and filed its answer on the same day the clerk entered default. The court finds that this delay does not warrant default. The motion is granted so that this dispute, involving ten claims and three defendants, may proceed on the merits with all parties present.

BACKGROUND

Entry of Default and Motion to Set Aside

[¶2] Wylease seeks relief from the clerk's default entered June 2, 2025 (FSX No. 76375869), based on a calendaring mistake caused by a miscommunication about the date of service. For reasons not fully explained, Wylease's agent in Colorado believed

the company had been served on May 13, rather than the actual service date of May 9. Relying on that incorrect date, Wylease calculated its answer deadline as Monday, June 2. The correct deadline was Thursday, May 29. Wylease contends that this error presents good cause to set aside the default under W.R.C.P.Ch.C. 55(c).

[¶3] Plaintiffs G Bar S Heavy Haul, LLC and Riatta Rentals, LLC responded on June 9 (FSX No. 76421319), arguing that under Wyoming precedent, "good cause" under Rule 55(c) "is to be found in the justifications for relief from a final judgment articulated in W.R.C.P 60(b)." *Resp*., ¶¶ 9, 31, 39. (citing *Hopeful v. Etchepare, L.L.C.*, 2023 WY 33A, ¶ 60, 528 P.3d 414, 432 (Wyo. 2023); *Vanasse v. Ramsay*, 847 P.2d 993, 999 (Wyo. 1993), and *Spica v. Garczynski*, 78 F.R.D. 134, 135 (E.D. Pa. 1978)). Plaintiffs argue that the motion's reasons fall short of satisfying Rule 60(b) as interpreted by the Wyoming Supreme Court. *Id.* ¶¶ 13-19. In particular, plaintiffs contend that Wylease "cannot show excusable neglect in this matter" in light of *Fluor Daniel (NPOSR), Inc. v. Seward*, 956 P.2d 1131, 1134 (Wyo. 1998). *Id.* ¶¶ 18-19. In that case, the Wyoming Supreme Court found no abuse of discretion in finding inexcusable neglect when an in-house paralegal's "very hectic and busy schedule" caused her to misplace served pleadings and led to the corporation's late appearance. 956 P.2d at 1134.

[¶4] Plaintiffs also assert that Wylease was culpable in its tardy appearance. *Resp.*, ¶¶ 23-29; 31-36. According to the response, plaintiffs had requested that an attorney representing Wylease accept service during pre-suit negotiations in this matter. *Id.* ¶¶ 23-24. That attorney claimed not to have authorization to accept service, thereby prompting plaintiffs' service on Wylease's registered agent. *Id.* at ¶¶ 25-27.

[¶5] Plaintiffs also seem to suggest that a meritorious defense is not possible here given the nature of this case: "In this case, a contract for services was entered into, Plaintiffs performed as required, and Defendant refused to pay the amount due. Defendant cannot dispute these assertions." *Id.* at ¶ 32.

[¶6] Wylease replied on June 13 (FSX No. 76463587), describing the delay as a good-faith mistake—not willful disregard for court rules—and highlighting the defense raised in its answer that any amounts owed for work related to one of the projects at issue are the responsibility of defendant Prestige.

Complaint and Answer

[¶7] This oil and gas lawsuit involves two wells on what is known as the Maple Mound Property in Goshen County, Wyoming. *Comp.,* ¶ 13 (FSX No. 76132637). Plaintiffs allege that they performed transport and rental services for defendant Chipcore, an oil and gas production company with part-ownership in the leases on the Maple Mound wells. *Id.* ¶¶ 3, 15-21. According to the complaint, Chipcore promised to—but did not fully—pay for those services. *Id.* ¶¶ 18-19; 22-28.

[¶8] This matter was first litigated in district court. *Id.* ¶ 30. That lawsuit involved the claims at issue here as well as similar claims regarding wells on another property known as the Kessler Well Property. *Id.* ¶¶ 14, 30. It also included additional defendants but did not include defendant Prestige. *Id.* ¶ 30. Plaintiffs dismissed that suit after all the defendants answered, "as it was determined that [the suit] was filed in an inappropriate venue." *Id.* ¶ 32. Following dismissal, the parties settled the Kessler Well Property claims. *Id.* ¶ 33. Defendants Chipcore and Wylease entered into a settlement agreement at that time, whereby, in plaintiffs' view, Wylease agreed to pay for the services that plaintiffs performed on the Maple Mound Property. *Id.* 36. Plaintiffs believe that they are therefore third-party beneficiaries of the settlement agreement and can enforce its provisions in this lawsuit. *Id.* ¶¶ 37-38.

[¶9] Plaintiffs each pleaded five causes of action (ten total): two for breach of contract, two for unjust enrichment, two for promissory estoppel, two for breach of the covenant of good faith and fair dealing, and two for third-party beneficiary breach of contract. *Id.* ¶¶ 39-84. Four of these causes of action were brought against Wylease: the unjust enrichment causes (which are against all three defendants) and the third-party beneficiary breach of contract causes (which are only against Wylease).

[¶10] Defendants Wylease and Prestige answered jointly on June 2 (FSX No. 76382832). The answer states that (1) "Prestige is the sole owner of oil and gas lease interests in the Maple Mound Property and is responsible for any valid unpaid debts incurred by Chipcore for the development of wells on the Maple Mound Property" and that (2) the settlement agreement between Chipcore and Wylease states: "No Rights in Third Parties. Nothing in this Agreement is intended to or does create any rights in third parties." *Ans.*, ¶¶ 5, 77.

LAW

[¶11] Rule 55 governs defaults and default judgments. These distinct "judicial acts" are outlined by Rule 55 subsections (a) and (b). *Vanasse*, 847 P.2d at 996.

[¶12] An entry of default is typically "a clerical act" performed by the clerk of court that establishes liability as pleaded in the complaint *Id.* It is not a judgment, however, and does not fix "either the amount or the degree of relief." *Id.* at 997. Conversely, a default judgment under Rule 55(b) "defines the amount of liability or the nature of the relief." *Id.* A default judgment that does not adjudicate all rights and liabilities of the parties "may be revised at any time before the entry of a judgment adjudicating all the claims and all the parties' rights and liabilities." W.R.C.P.Ch.C. 54(b).

[¶13] The distinction between entry of default and default judgment appears in the rules for setting each aside. Under Rule 55(c), the court "may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b)."

[¶14] Wyoming has charted its own course in setting standards for relief from defaults. *See, e.g.*, *Fluor Daniel (NPOSR), Inc. v. Seward*, 956 P.2d 1131, 1135 n.1 (Wyo. 1998). But in 2017 it amended Rule 55(c) to match the wording of its federal counterpart, which had been amended in 2015. *See* Second Nunc Pro Tunc Ord. Repealing Existing W.R.C.P. and Second Nunc Pro Tunc Ord. Adopting W.R.C.P. (Wyo. Feb. 2, 2017). Federal Rule 55(c) was amended to clarify that only final default judgments are subject to the "demanding standards" of Rule 60(b):

> Rule 55(c) is amended to make plain the interplay between Rules 54(b), 55(c), and 60(b). A default judgment that does not dispose of all of the claims among all parties is not a final judgment unless the court directs entry of final judgment under Rule 54(b). Until final judgment is entered, Rule 54(b) allows revision of the default judgment at any time. The demanding standards set by Rule 60(b) apply only in seeking relief from a final judgment.

Fed. R. Civ. P. 55, 2015 Notes of Advisory Committee. *See also* 10A Charles Alan Wright *et al.*, Federal Practice and Procedure: Civil § 2692 (4th ed. 2024) ("Rule 55(c) was amended in 2015 to insert the word "final" before "default judgment."); § 64:17. Setting aside an entry of default, 6 Bus. & Com. Litig. Fed. Cts. § 64:17 (5th ed. Nov. 2024) ("The 2015 Amendments to the Federal Rules of Civil Procedure amended Rule 55(c) to clarify that the court has the discretion to set aside a default for 'good cause' and a 'final' default judgment under Rule 60(b)."); *Lavitt v. Stephens*, 2015 WY 57, ¶ 19, 347 P.3d 514, 520-21 n.6 (Wyo. 2015) (finding persuasive advisory committee notes of federal rules identical to Wyoming's rules).

[¶15] Wyoming courts evaluate good cause under Rule 55(c) by considering three factors:

> (1) whether the plaintiff will be prejudiced;
>
> (2) whether the defendant has a meritorious defense; and
>
> (3) whether the culpable conduct of the defendant led to the default.

Matter of RVR, 2022 WY 153, ¶ 25, 520 P.3d 1158, 1165 (Wyo. 2022), *M & A Const. Corp. v. Akzo Nobel Coatings, Inc.*, 936 P.2d 451, 455 (Wyo. 1997) (citations omitted).

[¶16] In this context, prejudice amounts to "reliance upon the entry of default by the plaintiff to its detriment." *Nowotny v. L & B Cont. Indus., Inc.*, 933 P.2d 452, 461 (Wyo. 1997). A meritorious defense sufficient to support a request to set aside a default must include more than a "bald conclusion" or a "bare assertion." *Rush v. Golkowski*, 2021 WY 27, ¶ 27, 480 P.3d 1174, 1180 (Wyo. 2021) (quoting *S.C. Ryan, Inc.*

v. Lowe, 753 P.2d 580, 582 (Wyo. 1988)). The court may consider the movant's pleadings to assess whether a meritorious defense exists. *See* 10A Charles Alan Wright *et al.*, Federal Practice and Procedure: Civil § 2697 (4th ed. 2024). The movant does not have "to prove beyond a shadow of a doubt that it will win at trial, but merely to show that it has a defense to the action which at least has merit on its face." *Girafa.com, Inc. v. Smartdevil Inc.*, 728 F. Supp. 2d 537, 545 (D. Del. 2010) (cleaned up). Finally, careless business practices with respect to service of process that are within a party's control can amount to culpable conduct leading to a default. *Fluor Daniel*, 956 P.2d at 1135.

[¶17] Before setting aside a default, the court must also "consider" whether a motion "articulates a reason for relief" under Rule 60. *Hopeful*, ¶ 62, 528 P.3d at 432. Those Rule 60 reasons are "relevant in determining whether good cause has been shown for vacating an entry of default." *M & A Const. Corp. v. Akzo Nobel Coatings, Inc.*, 936 P.2d 451, 454 (Wyo. 1997). The court's decision to grant relief is then grounded in the exercise of its discretion. If "an appropriate reason is set forth, the exercise of discretion in granting or denying relief depends upon the facts of the case." *Fluor Daniel*, 956 P.2d at 1134. That discretion has been described as "broad" and "wide[.]" *M & A Const. Corp.*, 936 P.2d at 454; *Laird*, 882 P.2d at 1215.

[¶18] The decision to set aside a default is shaped by two "competing policy considerations." *Rosty v. Skaj*, 2012 WY 28, ¶ 29, 272 P.3d 947, 957 (Wyo. 2012). On one hand, the courts and litigants "have an interest in the finality of judgment and efficiency in litigation." *Id.* (citations omitted). On the other, the Wyoming Supreme Court has "long recognized that default judgments are not favored in the law" and that "it is preferable that cases be tried on their merits." *Id.* Put differently, default judgments "are punitive sanctions against an unresponsive party that serve as a protection to a diligent party[,]" *Loeffel v. Dash*, 2020 WY 96, ¶ 27, 468 P.3d 676, 683 (Wyo. 2020), while Rule 55(c) is "remedial" and "intended to promote decisions on the merits when possible." *Hopeful* ¶ 61, 528 P.3d at 432. Nonetheless, the "party who is seeking to have an entry of default vacated must establish that he is entitled to such relief." *M & A Const. Corp*, 936 P.2d at 454. This tension between finality and efficiency on the one hand, and resolution on the merits on the other, animates the court's analysis under Rule 55(c) here.

ANALYSIS

Whether the Motion Articulates a Reason for Relief

[¶19] Wylease has articulated a reason for relief under Rule 60(b): mistake. *Fluor Daniel* shows as much. There, the district court determined that the corporation had articulated a reason in accordance with 60(b) (specifically, the corporation itself misplacing pleadings that had been properly served), but in its discretion found the reason inexcusable on account of the company's culpable conduct. 956 P.2d at 1134 ("The

analytical process to be invoked by the trial court in the exercise of its discretion is summarized in *Whitney,* 892 P.2d at 794. The court first must consider whether the filed motion articulates a reason for relief under WYO. R. CIV. P. 60, and that is a question of law to be reviewed for correctness. In this instance, the district court recognized the adequate articulation of reasons for relief under WYO. R. CIV. P. 60."). Here, Wylease's registered agent mistakenly conveyed the date of service. Wylease's motion states a reason for relief under Rule 60.[1]

The "Good Cause" Factors

[¶20] Having found that Wylease has articulated a reason for relief under Rule 60(b), the court turns to the three factors that inform the "good cause" analysis under Rule 55(c): prejudice, meritorious defense, and culpable conduct. These factors favor relief.

Prejudice

[¶21] Plaintiffs will not be prejudiced by setting aside the entry of default in this case. Wylease both answered and moved to set aside the entry of default on the same day the clerk issued the default. Under these circumstances, plaintiffs could not have relied on the entry of default to their detriment. *See Laird*, 882 P.2d at 1215 ("In this case, First Southwestern was not prejudiced when the district court set aside the entries of default against the Lairds. The Lairds filed their objection to the entries of default and their answer on the same day that First Southwestern applied for and received its entries of default. First Southwestern certainly could not have relied upon the entries of default to its detriment.").

[1] Plaintiff suggests that movants must also substantiate their articulated reason to set aside a clerk's default—to "make some showing of why he was justified in failing to avoid mistake or inadvertence." *Resp*., ¶ 14. The court does not read Wyoming law to require such a showing, which would effectively rewrite Rule 55(c) to say that the court "may set aside an entry of default or a final default judgment under Rule 60(b)." The court finds the law on this issue unclear and can certainly understand plaintiffs' point of view. The idea that Rule 55(c)'s "good cause" can only be satisfied by substantiating a reason for relief under Rule 60(b) first appeared in *Vanasse v. Ramsay*, 847 P.2d 993, 999 (Wyo. 1993), which relied on federal precedent interpreting the then-existing "likewise" in Rule 55(c) to pin its "good cause" to Rule 60(b)'s "reasons." Several Wyoming cases since *Vanasse* have raised versions of that standard; at least three of those cases followed Rule 55(c)'s amendment. *See Matter of EMM*, 2018 WY 36, ¶¶ 10-11, 414 P.3d 1157, 1159–60 (Wyo. 2018), *Rush*, ¶¶ 16-19, 480 P.3d at 1178–79, *and Hopeful*, ¶¶ 57-63, 528 P.3d at 431–33. But the operative term "likewise" has been absent from the federal rule since 2015 and from the Wyoming rule since 2017, and according to the drafter's notes, now only final default judgments fall under Rule 60(b). Also worth noting: at least two cases—one before and one after Rule 55(c)'s amendment—analyzed a request to set aside a clerk's default without reference to Rule 60(b)'s reasons for relief. *See Matter of RVR*, 2022 WY 153, 520 P.3d 1158 (Wyo. 2022); *First Sw. Fin. Servs. v. Laird*, 882 P.2d 1211 (Wyo. 1994).

Meritorious Defense

[¶22] The second factor, whether the defendant has a meritorious defense, also favors relief. Wylease's answer asserts a meritorious defense to both claims it faces in this case. Wylease suggests that (1) if it is not an owner of oil and gas lease interests in the Maple Mound Property, then it would not be liable under the unjust enrichment claims and that (2) if Chipcore and Wylease did not intend for the plaintiffs to be third-party beneficiaries of their settlement agreement, then the plaintiffs could not enforce that agreement and succeed on their third-party beneficiary breach of contract claims.[2] The court finds that these defenses have at least some facial merit.

Culpable Conduct

[¶23] The final consideration is whether Wylease's conduct was culpable. Although this is the closest question, the balance favors setting aside the default.

[¶24] The four-day delay in answering resulted from an isolated calendaring mistake caused by a miscommunication about the service date by Wylease's registered agent. Once Wylease discovered the agent's calendaring mistake, it immediately addressed it by filing both its answer and this motion on the same day the default was issued. That error, caused by the agent and promptly cured by the defendant, does not suggest willfulness or evasion.

[¶25] True, had the attorney representing Wylease's interests during pre-lawsuit negotiations been authorized to accept service, Wylease's registered agent would not have been involved in service of this lawsuit. But by all accounts, Wylease was properly registered with the Wyoming Secretary of State, retained legal counsel, and took prompt remedial action once the oversight was identified. There is no indication that Wylease attempted to evade service or otherwise acted in bad faith.

[¶26] While the mistake was not entirely free from fault, it was not the kind of willful or reckless disregard that weighs against setting aside a default. Nor does it rise to the level of culpable conduct that would overcome the strong preference for deciding cases on their merits.

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[2] *See Peterson v. Meritain Health, Inc.*, 2022 WY 54, ¶ 51, 508 P.3d 696, 712 (Wyo. 2022) ("When third-party beneficiary claims are reviewed, the real question is whether the contracting parties intended the contract to be for the direct benefit of a third party; absent evidence of such intent, the party is an incidental beneficiary with no enforceable rights under the contract. In determining the parties' intent to contract for the benefit of a third party, courts can and must" look to the terms of the contract and surrounding circumstances, including facts showing the relations of the parties, the subject matter of the contract, and the apparent purpose of making the contract.") (cleaned up).

Policy Considerations

[¶27] Given the claims raised in this case, even the justifications for defaults—finality and efficiency—do not favor plaintiffs. If Wylease's default stood, plaintiffs would not receive a final default judgment in light of Rule 54(b): the court would not be inclined to direct entry of final judgment against Wylease considering the interconnectedness of the claims at issue. *See CIBC Nat'l Tr. Co. v. Dominick*, 2020 WY 56, ¶ 9, 462 P.3d 452, 456 (Wyo. 2020). Wylease's liability on the unjust enrichment claims could be affected by any relief obtained against the other defendants, *e.g.*, *W. Nat. Bank of Casper v. Harrison*, 577 P.2d 635, 642 (Wyo. 1978), and its liability on the third-party beneficiary breach of contract claims is directly contingent upon plaintiffs' first two causes (i.e. whether Chipcore failed to fully pay plaintiffs). Under Rule 54(b), any default judgment entered against Wylease could therefore "be revised at any time" during the litigation against the other defendants. Finality and efficiency are not served by denying Wylease the opportunity to litigate this case on the merits.

CONCLUSION

[¶28] Defaults are not favored in the law and the circumstances presented here make trial of this case on the merits preferable. Wylease answered two business days late, on the same day that the clerk's default entered. Wylease has since showed that it is not an "unresponsive party" meriting punishment. And given the posture of the claims presented in plaintiffs' complaint—ten claims against three defendants—the court finds a trial on the merits with all defendants participating more efficient. Wylease's request to set aside the clerk's June 2 entry of default is **GRANTED**.

DATED: June 30, 2025

/s/ Benjamin M. Burningham
CHANCERY COURT JUDGE