

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF FLORIDA  
GAINESVILLE DIVISION**

**GIDON ZAFT, an individual,  
And ROYAL MOROCCAN CORP.,  
a Florida corporation,**

**Plaintiffs,**

**CASE NO. 1:12-cv-277-RS-GRJ**

**v.**

**YAIR GOLAN, an individual,  
Y.P. GOLAN TRADE, LTD.,  
An Israeli entity, and DOES 1-10,**

**Defendants.**

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**ORDER**

Before me are Defendants' Motion to Vacate Clerk's Default (Doc. 21), Plaintiffs' Memorandum of Law in Opposition to Defendants' Motion to Vacate Clerk's Default (Doc. 24), and Defendants' Reply to Plaintiff's Response to Memorandum of Law in Opposition to Defendants' Motion to Vacate Clerk's Default (Doc. 27). For the reasons set out in this Order, Defendants' Motion to Vacate is **GRANTED**.

**Standard of Review**

Federal Rule of Civil Procedure 55(c) provides district courts discretion to set aside an entry of default for good cause in accordance with the guidelines provided under Rule 60(b). Good cause may exist if Defendants meet any of the following criteria: (1) a party's failure to provide a timely response to a complaint was not willful, (2) the party acted promptly to vacate the default, (3) a meritorious defense was asserted, and (4) the

plaintiff would suffer no prejudice if the default was vacated. *USA Flea Mkt., LLC v. EVMC Real Estate Consultants, Inc.*, 248 Fed.Appx. 108, 111 (11th Cir. 2007).

To establish a meritorious defense, the Eleventh Circuit requires “the moving party must make an affirmative showing of a defense that is likely to be successful.” *S.E.C. v. Simmons*, 241 Fed.Appx. 660, 664 (11th Cir. 2007); *In re Worldwide Web Systems, Inc.*, 328 F.3d 1291, 1296 (11th Cir. 2003).

Rule 60(b)(4) permits a district court to vacate a judgment if “the judgment is void.” In deciding whether to apply Rule 60(b), district courts are to consider “that the rule should be liberally construed” in favor of a trial on the merits. *Seven Elves, Inc. v. Eskenazi*, 635 F.2d 396, 402 (5th Cir. 1981).

### **Background**

On February 8, 2011, Plaintiff Gidon Zaft and Defendant Yair Golan entered into partnership and distributorship agreements for the distribution of certain products and intellectual properties. (Doc. 1, p. 42). The partnership agreement (“Agreement”) allocated 30% ownership of Royal Moroccan Incorporated (now Royal Moroccan Corporation (“RMC”)) to Defendant Golan and 70% ownership to Plaintiff Zaft (*Id.* at 43, 46).

Plaintiff Zaft is a citizen of the United States. (*Id.* at 2). RMC is a Florida corporation. (*Id.* at 1). RMC’s principal place of business is Ocala, Florida. (*Id.* at 2). Defendant Golan is a citizen of Israel, who resides in Israel. (*Id.* at 3). Defendant Golan owns or manages Y.P. Golan Trade, Ltd., (“YPGT”), an Israeli business entity of unknown form. (*Id.* at 3-4.) YPGT’s principal place of business is in Israel. (*Id.* at 3.)

The Agreement chose Florida courts and designated Florida law for the resolution of any disputes pertaining to the partnership. (*Id.* at 47-48.) The Agreement specified:

All notices required or permitted under the terms of this Agreement shall be in writing and shall be deemed to have been properly given and served when sent by overnight, Registered and/or Certified Mail, postage prepaid, returned receipt requested, properly addressed.

(*Id.* at 47.) The Agreement specified addresses to where service was to be delivered to either party in Florida and Israel. (*Id.*)

Plaintiffs sought damages from Defendants for (1) tortious misrepresentations, (2) fraud, (3) breach of contract, (4) breach of fiduciary duty, (5) unfair competition, and (6) tortious interference. *Id.* at 19-34. Plaintiffs' affidavit of service alleges to have served Defendants at the specified address in Israel on December 19, 2013. (Doc. 6; Doc 24, p. 4-5). Defendants deny service was made. (Doc. 21, p. 2). Defendants failed to plead within 21 days of alleged service. (Doc. 8, p. 2). Plaintiffs applied for a default judgment January 14, 2013, which the Clerk entered January 16, 2013. (Doc. 8; Doc. 9).

### **Analysis**

Defendants have established good cause under Rule 55(c). Defendants assert a meritorious defense and the record gives no evidence Plaintiffs would suffer prejudice were the default vacated. Because parties contest service, I decline to consider whether Defendants' failure to respond was willful or if Defendants' motion to vacate was prompt.

Defendants move to vacate the Default Judgment alleging (1) improper service of process, (2) lack of personal jurisdiction over Defendants, and (3) failure to state a cause of action upon which relief may be granted. (Doc. 21).

*Improper Service of Process*

Defendants argue service was improper because Fed. R. Civ. P. 4(f) requires service to conform with the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (“Hague Service Convention”). Plaintiffs contend use of a process server conforms with Florida law, federal law, Israeli law, and the Agreement. (Doc. 24, pp. 5-6; Doc. 1, Exhibit B, p. 6); FLA. STAT. § 48.031 (2013); Fed. R. Civ. P. 4(f). Plaintiffs cite the Agreement’s provisions that include a choice of Florida as the forum and source of governing law to settle disputes. (Doc. 1, Exhibit B, p. 6). The Agreement also requires all notices pursuant to it must be delivered by certified mail to specified addresses in Israel and Florida.

Parties may contract for service procedures other than those authorized by Fed. R. of Civ. P. 4. *Nat’l. Equip. Rental Ltd. v. Szukhent*, 375 U.S. 311, 315-16 (1964). The Agreement giving rise to the present litigation specifies notice must be made by certified mail to certain addresses. (Doc. 1, p. 47). Other courts have held the Hague Convention does not exclude agreed-upon methods of service. *E.g.* Mar. 18, 2013, Order p. 6, *Masimo Co. v. Mindray D.S. U.S.A., Inc.*, No. 8:12-cv-02206-CJC-JPR. I agree.

Plaintiffs argue they complied with the Agreement’s service requirements when the process server served Defendant Golan at the address specified in the Agreement. (Doc. 24, pp. 3-5). However, the contracted means of service was by certified mail, not

by process server. (Doc. 1, p. 47). There were no attempts by Plaintiffs to serve Defendants by mail. (Doc. 21, p. 6). A valid contract providing for an exclusive means of service precludes other means.

If, as Defendants argues, the Agreement had been terminated by the consent of the partners, termination does not absolve parties of a partnership's obligations. (Doc. 21, pp. 10-11). Partnerships are dissolved after signing and filing of a declaration of dissolution by the Florida Secretary of State or if all general partners consent. FLA. STAT. § 801 (2001). Such dissolution does not absolve the parties of their contractual obligations, but rather calls for the partnership's activities to be wound up. *Id.* The record does not indicate such a filing by the Florida Secretary of State. Even if the parties did agree to mutually terminate the partnership prior to alleged service in December, 2012, the partnership's service provisions remain in force until accounts are settled or the parties reach a new, superseding agreement.

The parties remain bound by the partnership's service provisions because the present suit indicates accounts have not been settled, and neither party has shown evidence of a new Agreement. Service was invalid because Plaintiffs failed to follow procedures specified in the Agreement. Invalid service qualifies as a meritorious defense and establishes good cause to set aside entry of a default under Rule 55(c). Therefore, I decline to consider Defendants' arguments of personal jurisdiction and failure to state a cause of action upon which relief may be granted.

**Conclusion**

Defendants have shown good cause under Rule 55(c) because Defendants have established a meritorious defense of invalid service of process, and the Plaintiffs would not suffer prejudice if the default was vacated. Liberally construing Rule 60(b)(4), as the Court must, the judgment is void. For the above reasons Defendants' Motion to Vacate is **GRANTED**. The Clerk is directed to vacate the default judgment. Defendants shall file their answer not later than August 23, 2013.

**ORDERED** on July 26, 2013.

**/s/ Richard Smoak**  
**RICHARD SMOAK**  
**UNITED STATES DISTRICT JUDGE**