

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROYAL INSURANCE CO. OF AMERICA : CIVIL ACTION
: :
v. : :
: :
PACKAGING COORDINATORS, INC. : :
et al. : NO. 00-CV-3231

MEMORANDUM

Padova, J.

October , 2000

Before the Court is Plaintiff’s Motion for Reconsideration. Plaintiff Royal Insurance Company (“Royal”) filed this action on June 26, 2000, seeking a declaration that it has no duty to defend Defendant Packaging Coordinators Incorporated (“PCI”) in a civil action filed on August 9, 1999, in the Circuit Court for Montgomery County, Maryland (“Maryland Action”). On July 20, 2000, Royal filed an Amended Complaint. Five days later, the parties stipulated that PCI could file an Answer on or before August 25, 2000. PCI, however, failed to do so. Rather, on August 3, 2000, PCI filed a Motion for Change of Venue. On September 13, 2000, Plaintiff filed a Request for Default. On September 26, 2000, the Court entered an Order denying Plaintiff’s Request (“September 26 Order”). Plaintiff now seeks reconsideration of that Order.

A motion for reconsideration will be granted if the moving party establishes that: (1) there is newly available evidence; (2) an intervening change in the controlling law occurred; or (3) there is a need to correct a clear error of law or prevent manifest injustice. Walker v. Spiller, No. CIV. A. 97-6720, 1998 WL 306540, at *2 (E.D. Pa. June 9, 1998). Royal’s Motion satisfies the standard for reconsideration. The Court’s September 26 Order was technically inappropriate under Federal

Rule of Civil Procedure 55(a) and represents a clear error of law. Thus, the Court will reconsider and vacate that Order.

In the interests of expediency, however, the Court will consider the matter as if the Clerk of Court had entered default against PCI. Since Defendant clearly failed to answer Royal's Complaint within the deadline stipulated by the parties or the time prescribed in the Federal Rules of Civil Procedure, the Clerk of Court would have entered default against it. The Court would then be faced with a motion to set aside the default. To avoid engaging the Clerk of Court in a useless exercise, the Court will proceed to assess the propriety of reopening default.

Federal Rule of Civil Procedure 55(c) permits courts to set aside an entry of default if good cause is shown. Fed. R. Civ. P. 55(c). In deciding whether to set aside an entry of default, courts must consider and make specific findings as to four factors: (1) whether the defendant has a meritorious defense; (2) whether the plaintiff would be prejudiced by vacating the default; (3) whether the default resulted from the defendant's culpable conduct; and (4) whether alternative sanctions would be effective. Emcasco Ins. Co. v. Sambrick, 834 F.2d 71, 73 (3d Cir. 1987)(explaining standard for vacating default judgment); Feliciano v. Reliant Tooling Co. Ltd., 691 F.2d 653, 656 (3d Cir. 1982)(noting that the same factors apply when vacating an entry of default as when vacating a default judgment). Less substantial grounds are adequate for setting aside a default than would be required for opening a judgment. Feliciano, 691 F.2d at 656. "Default is not favored and all doubt should be resolved in favor of setting aside default and reaching a decision on the merits." 99 Cents Stores v. Dynamic Distrib., No. Civ. A. 97-3869, 1998 WL 24338, at *4 (E.D. Pa. Jan. 22, 1998). For the following reasons, the Court determines that entry of default is inappropriate in this case.

The threshold factor is whether the defendant has alleged facts which could constitute a meritorious defense to the plaintiff's cause of action. Resolution Trust Corp. v. Forest Grove, Inc., 33 F.3d 284, 288 (3d Cir. 1994). To assess this factor, the court may examine the defendant's answer, or if none was filed, the allegations in its motion to vacate the default judgment or set aside entry of default. Emcasco, 834 F.2d at 73; Kauffman v. Cal Spas, 37 F. Supp.2d 402, 405 n.1 (E.D. Pa. 1999). Royal seeks a declaration that it has no duty to defend PCI under the terms of a commercial general liability policy in the Maryland Action involving claims for damages for PCI's alleged mishandling of a shipment of products manufactured by Roche Diagnostics Corporation. Royal argues that the applicable insurance policy does not cover damages for breach of contract or for personal property belonging to third-parties that are in the insured's care. PCI, however, counters that the policy obligates Royal to defend PCI in suits seeking damages for property damage. PCI's Answer reveals that PCI may have a potentially meritorious defense to Royal's suit. Thus, this factor weighs in favor of permitting the case to proceed on the merits.

The second consideration is whether prejudice would inure to the plaintiff should relief from the default be granted. Emcasco, 834 F.2d at 73. Delay in realizing satisfaction on a claim rarely constitutes prejudice sufficient to prevent relief. Feliciano, 691 F.2d at 656-57. Nor does the fact that the plaintiff will be required to further litigate the action on the merits constitute prejudice. Choice Hotels Int'l, Inc. v. Pennave Assoc., Inc., No. Civ. A. 98-4111, 2000 WL 133954, at *3 (E.D. Pa. Feb. 4, 2000). Rather, prejudice occurs when relief would hinder the plaintiff's ability to pursue its claims through loss of evidence, increased potential for fraud, or substantial reliance on the default. Feliciano, 691 F.2d at 657.

The Court determines that little or no prejudice would inure to Royal as a result of granting

PCI relief from the entry of default. Less than three months have elapsed since Plaintiff filed its Amended Complaint. A week after filing of the Amended Complaint, Defendant filed a Motion for Change of Venue. This Motion effectively placed the case in stasis pending the Court's decision. Only three weeks ago did the Court deny Defendant's Motion. Since denial of the Motion, the case has proceeded at a rapid pace. Defendant has since filed an Answer. A third-party, Cardinal Health, Inc., is seeking to intervene and recently filed a Complaint. There has been no substantial reliance on the possibility for entry of default. Plaintiff may bring any concerns regarding preservation of evidence, fraud, or other prejudice to the Court's attention through an appropriate motion. See id. (noting court's power under Rule 60(b) to impose specific terms and conditions upon reopening of a judgment or default in order to cure prejudice to the plaintiff). This factor, therefore, weighs in favor of allowing the case to proceed on the merits.

The third factor is the culpability of the defendant's conduct. Emcasco, 834 F.2d at 73. Default is appropriate where the defendant displays flagrant bad faith. Id. at 75. Although neither inadvertence nor ignorance or mistakes related to the rules constitute excusable neglect, the court may still vacate default where the evidence does not indicate flagrant bad faith or callous disregard. Brokerage Concepts, Inc. v. Nelson Med. Group, No. Civ. A. 99-5214, 2000 WL 283849, at *3 (E.D. Pa. Mar. 15, 2000). Even an unexcused failure to file an answer to a complaint, therefore, generally does not constitute flagrant bad faith or justify the "extreme" sanction of refusal to vacate entry of default. Emcasco, 834 F.2d at 75. Defendant apparently erroneously believed that filing a motion to transfer venue under 1404(a) tolled the deadline for filing an answer. (Def. Opp. to Pl. Request for Default at 1.) While the Court certainly does not condone or excuse ignorance of the rules or mistakes interpreting the rules, PCI's conduct throughout this litigation does not display flagrant bad

faith. This factor, therefore, also weighs against default.

Courts issue alternative sanctions in cases where they are troubled by the behavior of the party seeking to set aside the default. American Telecom, Inc. v. First Nat'l Comm. Network, Inc., No. Civ. A. 99-3795, 2000 WL 714685, at *8 (E.D. Pa. June 2, 2000). Punitive sanctions, however, are inappropriate absent evidence of bad faith or willful misconduct, or where the defendant sets forth a meritorious defense. Id.; Brokerage Concepts, 2000 WL 283849, at *4. Given the early stage of the proceedings, the lack of bad faith, and the indication of a meritorious defense, the Court determines that alternative or punitive sanctions are unnecessary.

As stated above, in the interest of expediency, the Court approaches reconsideration of its prior Order denying Plaintiff's Request for Entry of Default as if the Clerk of Court had entered default. PCI's conduct, "when evaluated in conjunction with the other relevant factors and [the United States Court of Appeals for the Third Circuit's] repeated admonition that 'dismissal must be a sanction of last, not first, resort,'" leads to the conclusion that the extreme sanction of default is inappropriate. See Emcasco, 834 F.2d at 75. The Court, therefore, denies Plaintiff's Request for Entry of Default.