

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

CORESTATES LEASING, INC., f/k/a  
MERIDIAN LEASING, INC.,  
Plaintiff,

v.

WESTCHESTER SQUARE MEDICAL CENTER,  
INC.,  
Defendant.

Civil Action  
No. 96-7557

Gawthrop, J.

June , 1997

M E M O R A N D U M

**I. Background**

On November 12, 1996, Plaintiff Corestates Leasing Inc. filed this diversity action alleging that Defendant Westchester Square Medical Center, Inc. breached an equipment leasing agreement by failing to make its September payment. After receiving the Complaint, Westchester's counsel contacted Corestates's counsel, arguing that the lawsuit was frivolous because it had made the September payment by check dated November 8, 1996. Westchester assumed that Corestates then withdrew its Complaint. Corestates corrected this assumption on January 8th, but Westchester did not enter an appearance or file an answer until January 21, 1996. That same day, January 21st, Corestates obtained a default judgment against Westchester, having obtained an entry of default on January 7th. Now before the court is Westchester's Motion to Set Aside Entry of Default and Default Judgment pursuant to Fed. R. Civ. P. 55(c) and 60(b).

## II. Discussion

### A. Jurisdiction and Venue

In its Motion, Westchester argues that the default judgment should be vacated as void. Specifically, Westchester maintains that this court lacks jurisdiction because the underlying lease transaction involved companies in New York and New Jersey, and because no part of the transaction occurred in Pennsylvania. Westchester does not elucidate these points in its accompanying Brief. I find its argument to be without merit.

Although the original lease was between Westchester, a New York corporation, and Morcroft Leasing Corp., a New Jersey corporation, Morcroft assigned the lease to Corestates, a Pennsylvania corporation. Westchester does not allege that this assignment was improperly made. See 28 U.S.C. § 1359. This court thus has diversity jurisdiction. See 28 U.S.C. § 1332. Further, the Eastern District of Pennsylvania is a proper venue because lease payments were made to Corestates in Pennsylvania. See 28 U.S.C. § 1391(a). Thus, I find that the default judgment is valid.

### B. Notification of Default

Westchester also suggests that the judgment should be set aside because Corestates never notified it of its intent to request a default. Corestates counters that no notification was required because it sought entry of default pursuant to Rule 55(b)(1). The Federal Rules of Civil Procedure require notice

only if the defendant has appeared in the action. See Fed. R. Civ. P. 55(b)(2) ("If the party against whom judgment by default is sought has appeared in the action, the party . . . shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application"). A defendant may appear either by filing a notice of appearance with the court, or by indicating to the plaintiff a clear purpose to defend the suit. FROF, Inc. v. Harris, 695 F. Supp. 827, 830 (E.D. Pa. 1988). Here, Westchester promptly contacted Corestates after the filing of the Complaint and expressed its willingness to engage local counsel if the parties could not settle their dispute. Because Westchester clearly indicated its intent to defend the suit, I find that it did enter an appearance within the meaning of Rule 55(b)(2). Thus, Corestates should have provided it with notice of its application for default.

C. Setting Aside a Default Judgment

A failure to give notice, however, does not mandate vacation of a default judgment. See Collex, Inc. v. Walsh, 74 F.R.D. 443, 448-49 (E.D. Pa. 1977). A court still should examine the surrounding circumstances. Id. More specifically, in exercising its discretion to set aside a default judgment, a court must consider the following factors: (1) whether setting aside the judgment would prejudice the plaintiff, (2) whether the defendant has a prima facie meritorious defense, (3) whether the defaulting defendant's conduct was culpable, and (4) the

effectiveness of alternative sanctions. Emcasco Ins. Co. v. Sambrick, 834 F.2d 71, 73 (3d Cir. 1987). Because courts prefer to decide cases on their merits, a court should resolve any doubts in favor of vacating the default judgment. Tozer v. Charles A. Krause Milling Co., 189 F.2d 242, 245 (3d Cir. 1951).

A court must first consider whether the plaintiff would suffer prejudice. That the result of this motion is the setting aside of the default is not the sort of prejudice of which the caselaw speaks. Rather, prejudice in this context means either that the plaintiff's ability to pursue the claim has been hindered or that relevant evidence has been lost. See Emcasco, 834 F.2d at 74. Neither has occurred in this case. I realize that this little procedural joust has cost Corestates some counsel fees, but if counsel had spent some of their time notifying their opposing counsel that they were seeking entry of default, as the rules require, that expenditure could have been avoided. Corestates's final argument, that a vacation of the default judgment would be pointless, conflates the prejudice and meritorious defense analyses. In sum, I find that Corestates would not be prejudiced by setting aside the default judgment.

Next, a court must examine whether the defendant has a meritorious defense, that is, one which, if established at trial, would constitute a complete defense to the action. Hritz v. Woma Corp., 732 F.2d 1178, 1181 (3d Cir. 1984). The defendant must allege "specific facts beyond simple denials or conclusionary statements." United States v. \$ 55,518.05 in U.S. Currency, 728

F.2d 192, 195 (3d Cir. 1984). This suit hinges upon the occurrence of an event of default. Under the lease agreement, such event may not occur unless the lessor has given notice of default. Corestates maintains that it gave this notice by sending bills stating past due balances. Westchester counters that the lease agreement requires more than a bill: the lessor must give explicit notice of default. Should this latter interpretation prevail, Westchester would have a meritorious defense because Corestates did not provide such notice.

A court also must determine whether the defendant engaged in culpable conduct. Culpable conduct means actions taken willfully or in bad faith, and thus requires more than mere negligence. Hritz, 732 F.2d at 1183; Gross v. Stereo Component Systems, Inc., 700 F.2d 120, 123-24 (3d Cir. 1981). For example, a "disregard for repeated communications from plaintiffs and the court, combined with the failure to investigate the source of a serious injury, can satisfy the culpable conduct standard." Hritz, 732 F.2d at 1183. Here, Westchester responded to all communications, albeit with a belligerent tone. Further, Westchester did investigate the alleged non-payment, and expressed some limited willingness to settle. Although one may see negligence in Westchester's failure to file an answer, such failure does not rise to the level of culpable conduct.

C. Attorneys' Fees

Finally, Corestates requests that if this court sets aside the default judgment, that it also order Westchester to pay Corestates's attorney's fees for defending this motion. Imposition of attorney's fees may be an effective alternative sanction in an appropriate case. See, e.g., Foy v. Dicks, 146 F.R.D. 113, 117 (E.D. Pa. 1993) (ordering payment of attorney's fees as sanction for procedural ineptitude in defaulting in a series of complaints). This, however, is not such a case. Westchester has not engaged in a pattern of "procedural ineptitude" which would warrant it paying Corestates's fees. The defendant has not acted in a Rule 11, fee-shifting manner.

**III. Conclusion**

In sum, I find that the Emcasco factors weigh in favor of setting aside the entry of default and default judgment.

An order follows.

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O R D E R

AND NOW, this            day of June, 1997, upon the reasoning  
in the attached Memorandum, Defendant's Motion to Set Aside an  
Entry of Default Pursuant to Fed. R. Civ. P. 55(c) and to Set  
Aside Judgment by Default Pursuant to Fed. R. Civ. P. 60(b) is  
GRANTED.

BY THE COURT

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Robert S. Gawthrop, III,            J.