

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

CARPENTERS HEALTH AND WELFARE : CIVIL ACTION
FUND OF PHILADELPHIA AND :
VICINITY, et al. :
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 v. :
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ALEXANDER WOODWORK CO., INC. : NO. 98-3647

MEMORANDUM ORDER

Presently before the court is plaintiff's motion for judgment by default and defendant's cross-motion to vacate the default entered by the Clerk.

Plaintiffs filed the complaint in this action on July 14, 1998. They claimed that defendant from at least March 1, 1998 breached its obligations under a collective-bargaining agreement and ERISA to make weekly payments to plaintiffs.

On August 4, 1998, a process server handed a copy of the summons and complaint to a woman who identified herself as defendant's secretary/receptionist and the person in charge of the office. Defendant does not contest the sufficiency of service or personal jurisdiction. See Fed. R. Civ. P. 4(h)(1), (e)(1); Pa. R. Civ. P. 424.

On September 9, 1998, after defendant had failed to appear or answer, plaintiffs requested that the Clerk of Court enter a default which he duly did later that day. On September 25, 1998, plaintiffs moved for a default judgment. On September 29, 1998, defendant filed an answer and moved several weeks later

to vacate the default.

In its belated answer, defendant responded to each of the allegations of the complaint with a one-word denial or an assertion that defendant lacked the knowledge or information sufficient to form a belief as to the truth of the allegation. Indeed, defendant purported to lack such knowledge or information even in responding to an allegation that defendant was a Pennsylvania corporation with an office at a specified address. Defendant also sets forth in conclusory fashion virtually every affirmative defense referenced in the Federal Rules, e.g., laches, waiver, estoppel, set-off, the statute of limitations, the statute of frauds and failure to join an unspecified indispensable party.

Defendant represents that its failure timely to answer the complaint was due to defense counsel's belief that plaintiffs' counsel had agreed to an extension of time to file an answer; to plaintiffs' failure to provide defendant with a sufficient "breakdown" of plaintiffs' claims which defendant represents it needed to draft an answer; and, to the fact that defendant's business was closing and its assets being sold, as a result of which "the time and energy of [defendant] and its attorney was focused" on those activities rather than on answering plaintiffs' complaint.

A court may set aside the entry of default for "good cause shown." Fed. R. Civ. P. 55(c). The decision of whether to vacate an entry of default is a matter of the court's discretion. United States v. \$55,518.05 in U.S. Currency, 728 F.2d 192, 194-95 (3d Cir. 1984). In determining whether there is good cause to vacate an entry of default, a court considers whether the plaintiff will be prejudiced; whether the fault was the result of the defendant's culpable conduct; and, whether the defendant has a meritorious defense. Id. at 195; Harad v. Aetna Cas. and Sur. Co., 839 F.2d 979, 982 (E.D. Pa. 1988). The criteria for determining whether to enter a default judgment are essentially the same as those for determining whether to set aside a default as the two pertinent provisions of Rule 55 are "essentially mirror images of one another," Duncan v. Speach, 162 F.R.D. 43, 44 (E.D. Pa. 1995).

Defendant has ceased operations and is selling its facility and assets. Plaintiffs argue that they are thus prejudiced by any delay as their ability to satisfy a judgment against defendant is further attenuated. Plaintiffs, however, are no more prejudiced in this regard than they would be if defendant had filed a timely answer with a good faith denial or viable defense.

Defendant's failure to file a timely answer was willful and intentional. If the parties had agreed that defendant's time

to answer would be extended, one would ordinarily expect that a stipulation to that effect would be filed with the court. Defendant has not questioned the authenticity or receipt of a letter to its counsel from plaintiffs' counsel advising that entry of a default and default judgment would be sought if defendant did not file an answer by September 3, 1998. Defendant has not controverted the averment of plaintiffs' counsel in his affidavit of October 19, 1998 that he supplied the requested "breakdown" of plaintiffs' claim prior to that date. Moreover, if defendant truly needed to know more about the nature of plaintiffs' claim adequately to frame a responsive pleading, it could and should have moved for a more definite statement pursuant to Fed. R. Civ. P. 12(e). See, e.g., Davis v. Levy, Angstreich, Finney, Baldante, Rubenstein & Coren, P.C., 20 F. Supp.2d 885, 888 (E.D. Pa. 1998). That defense counsel was busy assisting defendant in the closing of its business and disposition of assets does not remotely justify a decision to ignore the Federal Rules of Civil Procedure. If counsel truly had no time to draft an answer, other counsel should have been engaged or defendant should have moved for an order extending its time to answer.

It appears that having been explicitly advised that a default and default judgment would be sought, defendant willfully elected not to file a timely answer. Nevertheless, the court

would be inclined to grant defendant's motion if it had presented a meritorious defense.

A "meritorious defense" is one which "if established at trial, would completely bar plaintiffs' recovery." Momah v. Albert Einstein Medical Ctr., 161 F.R.D. 304, 307 (E.D. Pa. 1995). While a defaulting defendant need not demonstrate that it would necessarily prevail, it must do more than make general denials or conclusory allegations. Otherwise, a default generally could be vacated and judgment averted virtually at the will of the defendant.

To establish a meritorious defense, a defendant must present specific facts to show that it can make out a complete defense. See Jones v. Phipps, 39 F.3d 158, 165 (7th Cir. 1994) ("meritorious defense" must be "supported by a developed legal and factual basis"); \$55,518.05 in U.S. Currency, 728 F.2d at 195 (answer must allege "specific facts beyond simple denials or conclusory statements"); Sullivan v. Kodak Plumbing, Inc., 1998 WL 614214, *1 (N.D. Ill. Sept. 8, 1998) ("General denials and conclusory statements are insufficient to establish a meritorious defense"); Momah, 161 F.R.D. at 307 (defendant must "raise specific facts beyond a general denial" to show it "can make out a complete defense"); Singer v. Capanna, 1994 WL 18633, *3 (E.D. Pa. Jan. 13, 1994) ("the defenses being bald conclusions, bereft of any allegation of underlying factual basis, fall short of what

is recognized to show the presence of a genuine meritorious defense"); Ferraro v. Kuznetz, 131 F.R.D. 414, 419 (S.D.N.Y. 1990) ("defendant must present some factual basis for the supposedly meritorious defense").

Defendant does not rely in its brief on the array of affirmative defenses contained in the belated answer and from the record presented, it appears defendant could not do so without Rule 11 implications. Rather, defendant now asserts that it was not bound by the collective bargaining agreement after May 1, 1998 and that plaintiffs should be barred from recovery for "bad faith" in refusing to attempt amicably to resolve the parties' dispute.

Defendant makes absolutely no factual showing and offers absolutely no explanation for the legal conclusion that it ceased to be bound by the collective bargaining agreement in May 1998. Further, a recent opinion of the Acting Regional Director of the NLRB in a case involving the instant parties, submitted by plaintiffs on December 7, 1998, undermines any suggestion that defendant ceased somehow to be bound by the pertinent collective bargaining agreement after May 1, 1998.

A party to a contract has a right to enforce its terms. That a party elects to sue for a breach of contract without first attempting amicably to achieve a resolution of its claim may as a practical matter reflect questionable business judgment but it

does not legally constitute "bad faith" or preclude a recovery. Moreover, uncontested correspondence submitted by plaintiffs shows that they did consider reasons proffered by defendant in support of an offer to make partial payment and found they had no factual or legal support.

From the record presented, it is difficult not to conclude that defendant lacks any meritorious defense and is merely seeking to delay the inevitable while proceeds from the sale of its facility and other assets which could satisfy its obligation to plaintiffs are paid to others.

This is not a case in which some lesser sanction, necessarily a monetary one in the circumstances, would be an appropriate alternative. The practical effect of such a sanction, where the defendant is selling its assets and has ceased to generate new revenue, would be to provide for plaintiffs' members and beneficiaries a fraction of what they clearly appear to be entitled to on the record presented while further diminishing their chances of recovering the balance. It could encourage similarly situated defendants to withhold an answer until a default was entered and default judgment was impending and then with blanket denials or unsupported conclusory statements effectively deprive its workers of earned benefits while using its limited resources to pay management and other creditors.

ACCORDINGLY, this day of January, 1999, upon consideration of plaintiffs' Motion for Default Judgment Pursuant to Fed. R. Civ. P. 55(b)(2) (Doc. #4) and defendant's Motion to Vacate Default (Doc. #6), **IT IS HEREBY ORDERED** that plaintiffs' Motion is **GRANTED** and judgment for plaintiff will be entered, and defendant's Motion is **DENIED**.

BY THE COURT:

JAY C. WALDMAN, J.