

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

DEAN WHITING & PATRICIA, h/w : CIVIL ACTION
LOCAL 252, et al. :
 :
v. :
 :
ARIN BROCK, EDNA BROCK, WAKII :
MOORE, and HELEN SMITH : NO. 99-0393

MEMORANDUM AND ORDER

HUTTON, J.

May 19, 1999

Presently before the Court is Plaintiffs' unopposed Motion for Default Judgment Against All Defendants (Docket No. 4). For the reasons stated below, the Plaintiffs' motion is **DENIED with leave to renew.**

I. DISCUSSION

The Plaintiffs move the Court to enter judgment by default in the amount of \$75,000.00 against all defendants for failure to enter an appearance or otherwise plead. Not only is Plaintiffs' motion procedurally deficient, it cites to no authority and is absolutely devoid of any substance.

First, Plaintiffs' motion does not comply with Federal Rule of Civil Procedure 55. Plaintiffs failed to file this motion as a precipe to enter default and attach an affidavit that the Defendants are not infants or incompetent persons. The proper format is for the Defendants to file a precipe with the Clerk to

enter default and file a separate motion with the Court for default judgment. Fed. R. Civ. P. 55(a)-(b).

Second, the Clerk's Office can only enter judgment when an exact amount is stated in the wherefore part of the complaint. If no sum certain exists, then the Court, upon receipt of the motion for judgement, must hold a damage hearing. Fed. R. Civ. P. 55(b)(2).

Third, the court is required to exercise "sound judicial discretion" in deciding whether to enter default judgment. "This element of discretion makes it clear that the party making the request is not entitled to a default judgment as of right, even when the defendant is technically in default." 10 Wright, Miller & Kane, Federal Practice and Procedure § 2685. The court should consider a number of factors in determining whether to enter default and default judgment, including:

the amount of money potentially involved; whether material issues of fact or issues of substantial public importance are at issue; whether the default is largely technical; and whether plaintiff has been substantially prejudiced by the delay involved. Furthermore, the court may consider whether the default was caused by a good faith mistake or excusable neglect; how harsh an effect a default judgment might have; and whether the court thinks it later would be obliged to set aside the default on defendant's motion.

Franklin v. National Maritime Union of America, No.CIV.A.91-480, 1991 WL 131182, *1 (D. N.J. Jul. 16, 1991), aff'd, 972 F.2d 1331 (3d Cir. 1992) (TABLE), cert. denied, 507 U.S. 926 (1993) (citing 10 Wright, Miller & Kane, Federal Practice and Procedure § 2685 (1983)). The Third Circuit has condensed those factors into a list

of three: (1) prejudice to the plaintiff if default judgment is not granted; (2) whether the defendant has a meritorious defense; and (3) whether the defendant's delay was the result of culpable misconduct. Harad v. Aetna Cas. and Sur. Co., 839 F.2d 979, 982 (3d Cir. 1988). Plaintiffs' motion fails to address any of these issues.

Fourth, the instant motion is deficient in that no certificate of service is attached. It does not appear that the Plaintiffs served a copy of this Motion for Default Judgment on the Defendants, and is therefore advised that any motion, petition or memorandum filed with the Court must be served on opposing counsel or the Defendants if no counsel is indicated, with a certificate of service attached to any filing setting forth the date and manner of service.

Fifth, and finally, Local Rule 7.1(c) provides in pertinent part that: "Every motion not certified as uncontested ... shall be accompanied by a brief containing a concise statement of the legal contentions and authorities relied upon in support of their motion." E.D. Pa. R. Civ. P. 7.1(c). Plaintiffs' motion is not accompanied by any brief and their motion cites to no authority. Thus, the Plaintiff's motion is denied with leave to renew.

An appropriate Order follows.

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O R D E R

AND NOW, this 19th day of May, 1999, upon consideration of Plaintiffs' unopposed Motion for Default Judgment Against All Defendants (Docket No. 4), IT IS HEREBY ORDERED that the Plaintiffs' motion is **DENIED with leave to renew.**

IT IS FURTHER ORDERED that:

(1) the Plaintiffs **SHALL FILE** their Motion for Entry of Default with the Clerk's Office within fifteen (15) days from the date of this Order; and

(2) the Plaintiffs **SHALL FILE** their Motion for Default Judgment with this Court within twenty (20) days from the date of this Order.

BY THE COURT:

HERBERT J. HUTTON, J.