

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

WILLIAM HAM, ET AL.	:	
	:	CIVIL ACTION
v.	:	
	:	
ACE GAMING, LLC, d/b/a SANDS :	:	
CASINO HOTEL	:	
	:	NO. 04-CV-732
v.	:	
	:	
TROY REED	:	

**MEMORANDUM & ORDER**

Presently before the Court is Defendant’s Motion for Entry of Default Judgment Against Third-Party Defendant Troy Reed for Failure to Defend (Doc. No. 21). For the following reasons, default judgment will be entered against Third-Party Defendant Troy Reed.

**I. FACTS**

On or about July 24, 2003, Plaintiff William Ham won approximately \$7,050 playing blackjack at the Sands Hotel and Casino (“Sands” or “Hotel”) in Atlantic City, New Jersey. (Compl. ¶¶ 4, 6, 7.) After he cashed in his chips, Plaintiff proceeded to an elevator in order to go to his VIP Hotel suite. (*Id.* ¶¶ 8-10.) Because Ham was staying in a VIP suite, he needed to use a second elevator to access his room. (*Id.* ¶ 10.) While he was in this second elevator, Third-Party Defendant Troy Reed assaulted and robbed Ham taking his \$7,050 in blackjack winnings. (*Id.* ¶ 12; Third-Party Compl. ¶¶ 5, 15.) Plaintiffs allege that Sands was negligent in failing to

provide a safe environment for Ham.<sup>1</sup> (Compl. ¶¶ 20-25.)<sup>2</sup>

Sands filed a Third-Party Complaint against Third-Party Defendant Reed on September 7, 2004 (Doc. No. 15), alleging that Reed struck Plaintiff and took his money.<sup>3</sup> On December 23, 2004, the Third-Party Complaint and Summons were properly served on Reed. (Doc. No. 19; Doc. No. 21 Ex. A.) The affidavit and return of service were filed with the Court on December 30, 2004. (Doc. No. 19.)<sup>4</sup> Third-Party Defendant's Response to the Complaint was due on January 12, 2005. On February 9, 2005, Sands requested an entry of default (Doc. No. 20), which was entered by the Clerk the same day. Sands filed the instant Motion on February 23, 2005. (Doc. No. 21.)

## **II. DISCUSSION**

A district court has the discretion to enter a default judgment against less than all

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<sup>1</sup>Plaintiffs filed the original Complaint in the Court of Common Pleas of Philadelphia County on January 9, 2004. (Doc. No. 6.) The case was removed to this Court on February 20, 2004. (Doc. No. 1.)

<sup>2</sup>Plaintiff Marianne Ham also raises a loss of consortium claim against Defendant Sands. (Compl. ¶¶ 26-28.)

<sup>3</sup>Sands avers that

third party defendant Troy Reed is solely liable to the plaintiff, or in the alternative liable to defendant/third party plaintiff Sands, and/or jointly and severally liable with defendant/third party plaintiff Sands in contribution and/or indemnity on the causes of action set forth in plaintiff's Complaint and/or the causes of action set forth in this Third Party Complaint.

(Third-Party Compl. ¶¶ 10, 17.)

<sup>4</sup>Troy Reed was served at the Mid State Correctional Facility in Wrightstown, New Jersey. The record does not reflect whether Reed is an inmate at that facility as a result of the conduct alleged in this case.

defendants in a matter. Fed. R. Civ. P. 54(b).<sup>5</sup> However, a court may not enter a default judgment against one of several defendants when: (1) the theory of recovery rests on joint liability; or (2) the kind of relief requested is such that it must be granted against each defendant. *See Frow v. De La Vega*, 82 U.S. (15 Wall.) 552 (1872); 10 James Wm. Moore et al., Moore’s Federal Practice § 55.25 (3d ed. 2004). Such an approach ensures that logically inconsistent verdicts are not reached against separate defendants. *Frow*, 82 U.S. (15 Wall.) at 554; *see also Farzetta v. Turner & Newall, Ltd.*, 797 F.2d 151, 154 (3d Cir. 1986) (“[I]f at trial facts are proved that exonerate certain defendants and that as a matter of logic preclude the liability of another defendant, the plaintiff should be collaterally estopped from obtaining a judgment against the latter defendant . . .”).

In this case, there is little danger of logically inconsistent determinations as to the liability of Sands and the liability of Reed. *See* 10 James Wm. Moore et al., Moore’s Federal Practice § 55.25 (3d ed. 2004) (“[W]hen the causes of action against multiple defendants arose from independent, concurrent wrongs, default judgment against one defendant is entirely appropriate, even if the other defendants prevail on the merits.”). Plaintiff’s theory of liability against Sands is that Sands was negligent in failing to maintain a safe environment at the Hotel. Sands alleges that Third-Party Defendant Reed is liable for Plaintiff’s injuries because he struck Plaintiff and

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<sup>5</sup>Federal Rule of Civil Procedure 54(b) provides that

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross-claim, or third-party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.

Fed. R. Civ. P. 54(b).

took his money.<sup>6</sup> Neither theory lends itself to a finding of joint liability. A jury could certainly conclude that Sands was not negligent, even though it failed to prevent Reed from injuring Plaintiff. Because differing judgments as to Sands and Reed would not necessarily be inconsistent, we may enter a default judgment against Third-Party Defendant Reed.

The determination of whether to enter a default judgment is left to the sound discretion of the district court. Fed. R. Civ. P. 55(b)(2); *Chamberlain v. Giampapa*, 210 F.3d 154, 164 (3d Cir. 2000); *Hritz v. Woma Corp.*, 732 F.2d 1178, 1180 (3d Cir. 1984). In exercising that discretion, the court should consider: (1) the prejudice to the third-party plaintiff if a default judgment is not entered; (2) whether the third-party defendant has a meritorious defense; and (3) whether the third-party defendant's delay is due to culpable conduct. *See Chamberlain*, 210 F.3d at 164. It appears that Third-Party Defendant Reed has no meritorious defense in this action.<sup>7</sup> Once a court determines that a defendant is in default, "all factual allegations of the complaint other than those pertaining to the amount of damages are to be taken as true." *Tancredi v. Cooper*, Civ. A. No. 02-1125, 2003 U.S. Dist. LEXIS 18109, at \*8 (E.D. Pa. Sept. 4, 2003) (entering default judgment against defendant). Sands avers that Reed "intentionally, deliberately and maliciously assaulted plaintiff William Ham in an elevator at the Sands Casino Hotel by striking plaintiff with his hands, fists and feet for the purpose of robbing plaintiff . . . ." (Third-

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<sup>6</sup>Sands also asserts that Reed "negligently struck" Plaintiff. (Third-Party Compl. ¶ 8.) However, we are unable to discern how Reed could be liable for Plaintiff's injuries based on this theory of recovery.

<sup>7</sup>Because Third-Party Plaintiff failed to address any of the prongs of the *Chamberlain* analysis, we are unable to evaluate whether Sands may suffer prejudice if a default judgment is not entered. Moreover, it is difficult to know whether Reed's delay in responding is the result of culpable misconduct.

Party Compl. ¶¶ 5, 15.) Based on these averments, Reed has no meritorious defense to the Third-Party Plaintiff's claim against him.

Even though we direct the Clerk to enter a default judgment against Third-Party Defendant Reed, we will postpone a damages hearing until trial when liability as to Sands is determined. *See In re Uranium Antitrust Litig.*, 617 F.2d 1248, 1262 (7th Cir. 1980)

An appropriate Order follows.

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**ORDER**

AND NOW, this 6<sup>th</sup> day of April, 2005, upon consideration of Defendant's Motion for Entry of Default Judgment Against Third-Party Defendant Troy Reed for Failure to Defend (Doc. No. 21, No. 04-CV-432), it is ORDERED that the Motion is GRANTED and Judgment is entered against Troy Reed on the issue of liability. A determination of damages will be made at trial.

IT IS SO ORDERED.

BY THE COURT:

S:/R. Barclay Surrick, Judge