

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

MOARK, LLC et al.	:	CIVIL ACTION
Plaintiffs	:	
	:	
v.	:	NO. 06-1362
	:	
YARDLEY FARMS, LLC,	:	
Defendant.	:	

Diamond, J.

June 2, 2006

MEMORANDUM

Because Defendant Yardley Farms failed timely to plead or otherwise defend in this action, the Clerk entered default on May 4, 2006 pursuant to Fed. R. Civ. P. 55(a). Four days later, Defendant filed an Answer to the Complaint, and on May 18, 2006, Defendant asked me to set aside the default. Plaintiff opposes this request and has moved for default judgment. I grant Defendant's request and deny Plaintiff's Motion.

LEGAL STANDARD

Fed. R. Civ. P. 55(c) authorizes me to set aside a default "for good cause." In determining whether a defendant has shown "good cause," I must consider three factors and make explicit findings as to each: (1) whether lifting the default will prejudice the plaintiff; (2) whether the defendant has a prima facie meritorious defense; (3) whether the defaulting defendant's conduct is excusable or culpable. Emcasco Insurance Co. v. Sambrick, 834 F.2d 71, 73-74 (3d Cir. 1987); see also Nationwide Mut. Ins. Co. v. Starlight Ballroom Dance Club, Inc.,

No. 05-1031, 2006 U.S. App. LEXIS 6282, at *5 (3d Cir. Mar. 14, 2006) (citing Harad v. Aetna Casualty & Surety Co., 839 F.2d 979, 982 (3d Cir. 1988)) (listing these factors for purposes of vacating default judgment); Feliciano v. Reliant Tooling Co., 691 F.2d 653, 656 (3d Cir. 1982) (noting that same factors apply when setting aside default as when vacating default judgment); Accu-Weather, Inc. v. Reuters Ltd., 779 F. Supp. 801, 802 (M.D. Pa. 1991) (applying these factors to entry of default). The Third Circuit does not favor defaults; if there is any doubt as to whether the default should be set aside, I am obligated to set aside the default and reach the case's merits. Farnese v. Bagnasco, 687 F.2d 761, 764 (3d Cir. 1982); see also Feliciano, 691 F.2d at 656 (less substantial grounds may be adequate for setting aside a default than would be required for vacating a judgment).

DISCUSSION

I. Meritorious Defense

Whether Yardley has a meritorious defense is the "threshold issue" I must consider. Nationwide Mut. Ins. Co., 2006 U.S. App. LEXIS 6282, at *5 (quoting Hritz v. Woma Corp., 732 F.2d 1178, 1181 (3d Cir. 1984)). Yardley need not prove that it will ultimately prevail; rather, it is sufficient if the proffered defense is not "facially unmeritorious." Emcasco Insurance Co., 834 F.2d at 74 (quoting Gross v. Stereo Component Systems, Inc., 700 F.2d 120, 123 (3d Cir. 1983)).

Moark and its subsidiaries seek to enforce several contracts for the sale of egg products to

Yardley. See Compl. Exh. A, B, C. Plaintiffs allege that Yardley, acting in bad faith, failed to pay over \$750,000 for products already delivered under these contracts. Plaintiffs also bring a claim for conversion, alleging that Yardley intentionally stopped payment on six checks after agreeing to provide them as payment for products.

Yardley does not deny the existence of the contracts, but asserts that Plaintiffs' continued acceptance of regular partial payment for balances due estops their claims for breach. See Ans. at ¶¶ 43–46; Def. Mem. in Resp. at 3–4. As to the conversion claim, Yardley alleges that it stopped payment on the checks because Plaintiffs had lost prior payments. Finally, Yardley argues that Plaintiffs' bad faith failure to perform excuses Yardley's actions. See Def. Mem. in Resp. at 3. I find that these defenses are not "facially unmeritorious." Indeed, if proven, the defenses could well defeat Plaintiffs' claims. See e.g., Cohen v. Sabin, 307 A.2d 845, 849–50 (Pa. 1972); Barrist v. John Wannimaker Philadelphia, Inc., 213 A.2d 664, 665 (Pa. 1965).

II. Prejudice to Plaintiffs

Prejudice exists if, after the entry of default: (1) circumstances change, materially impairing a plaintiff's ability to litigate its claim; or (2) relevant evidence has become lost or unavailable. Emasco, 834 F.2d at 74. Plaintiffs have not even asserted that they have encountered these difficulties. Rather, they offer only the conclusory allegation that they "will be further prejudiced if Yardley is permitted to delay the day of reckoning." See Mot. for Default J. at 9. I am not surprised that Plaintiffs can articulate no actual prejudice caused by the four day

delay in the filing of Yardley's Answer. Accordingly, I find that Plaintiffs have not shown "prejudice" within the meaning of Rule 55(c). See Emasco, 834 F.2d at 74; Accu-Weather, 779 F. Supp. at 802.

III. Defendant's Culpability

I am obligated to deny Yardley's request to set aside the default if Yardley was at fault in failing timely to respond to Moark's Complaint. The Third Circuit has held that defendant's conduct is considered "culpable" if it evinces "'flagrant bad faith'" or a "'callous disregard of'" its responsibilities. Emasco, 834 F.2d at 75 (quoting National Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 643 (1976)). Plaintiffs argue that "Yardley's failure to file a timely response to the complaint is just another attempt by Yardley to delay payment to plaintiffs." See Mot. for Default J. at 10. Once again, this is entirely conclusory. Defendant has explained that it inadvertently miscalculated the deadline for filing because it was never supplied with a copy of the Affidavit of Service. See Def. Mem. in Resp. at 4. The resulting four day delay, without evidence of willful misconduct, simply is not "flagrant bad faith" sufficient to warrant the "'extreme'" sanction of refusing to set aside the default. See Emasco, 834 F.2d at 75 (quoting Poulis v. State Farm Fire & Casualty Co., 747 F.2d 863, 867 (3d Cir. 1984)). Accordingly, I find that the Defendant's conduct here is not culpable.

CONCLUSION

Because all three factors weigh in Defendant's favor, I find that default should be set aside. Accordingly, Defendant's request is granted and Plaintiffs' Motion for Default Judgment is denied. An appropriate Order follows.

/s Paul S. Diamond, J.

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ORDER

And now, this 2nd day of June, 2006, upon consideration of Defendant's Request to Set Aside Default (Doc. No. 8), Plaintiffs' Motion for Default Judgment (Doc. No. 10), Defendant's Response (Doc. No. 11), and any related documents, it is **ORDERED** as follows:

1. Defendant's Request to Set Aside Default is **GRANTED**.
2. Plaintiff's Motion for a Default Judgment is **DENIED**.

BY THE COURT:

/s Paul S. Diamond, J.

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