

2005 WL 465400

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United States District Court,
W.D. Texas, San Antonio Division.

EQUAL EMPLOYMENT OPPORTUNITY
COMMISSION, Plaintiff,

v.

MOTHERS WORK, INC., Defendant.

No. Civ.A.SA04CA0873-XR. | Feb. 28, 2005.

Attorneys and Law Firms

Judith G. Taylor, Robert B. Harwin, David C. Rivala, San Antonio, TX, for Plaintiff.

Randolph P. Tower, Clemens & Spencer, for Defendant.

Opinion

ORDER

RODRIGUEZ, J.

*1 On this date the Court considered Defendant's motion to set aside the entry of default (docket no. 6) and Plaintiff's motion for default judgment (docket no. 7). Entry of default was entered against Defendant on January 3, 2005 by the United States District Clerk. On January 24, each party filed their present motions. The decision to set aside the entry of default is left to the discretion of the district court. *Lacy v. Sitel Corp.*, 227 F.3d 290, 291-92 (5th Cir.2000). The standard for setting aside an entry of default is "good cause." FED. R. CIV. P. 55(c). When determining whether good cause has been shown by the defendant, the Court looks to three factors: (1) whether the default was willful; (2) whether setting aside the default would prejudice the adversary; and (3) whether a meritorious defense is presented. *Dierschke v. O'Cheskey*, 975 F.2d 181, 183 (5th Cir.1992). Other factors may also be considered, including whether "the defendant acted expeditiously to correct the default." *Id.* at 184. Default judgment "should not be granted on the claim, without more, that the defendant had failed to meet a procedural time requirement." *Mason & Hanger-Silas Mason Co. v. Metal Trades Council*, 726 F.2d 166, 168 (5th Cir.1984).

The failure of Defendant to answer, while ill-advised, was not willful. Defendant asserts that it believed the parties had agreed to extend the time for filing of the answer indefinitely while settlement discussions were ongoing.

Plaintiff disputes that there ever was such an agreement. In fact, Plaintiff disputes that there was much discussion at all between the parties. Both sides do agree that, when Defendant's General Counsel was notified of the motion by Plaintiff for entry of default, Plaintiff's attorney erroneously advised Defendant's General Counsel that the Court had not acted upon the motion. At that time, however, default had already been entered. Defendant's General Counsel was also apparently told Plaintiff intended to file a motion for default judgment on January 24, 2005. Defendant's General Counsel thus believed that he had until January 24, 2005 to file its answer.

Defendant's failure to file its answer within the twenty days after service of summons as required by Rule 12(a) was clearly in error. Parties may not agree to extend the deadline for a defendant to file its answer without approval by the Court pursuant to FED. R. CIV. P. 6(b). See *Orange Theatre Corp. V. Rayherstz Amusement Corp.*, 139 F.2d 871 (3rd Cir.1944). This is especially true as to agreements between the parties to extend the deadline indefinitely. Failure to file an answer within the required timeframe will result in the entry of default unless an extension has been ordered by the Court. However, the failure to file an answer under circumstances such as these, where it appears that the defendant has a genuine belief that the deadline for filing the answer has been extended by agreement, is likely to be excusable. There is no evidence that Defendant was "cho[osing] to play games" with the Court in failing to file its answer. As such, Defendant's actions cannot be said to be willful.

*2 Nor is there prejudice to Plaintiff in setting aside the default. There is no prejudice where "the setting aside of the default has done no harm to the Plaintiff except to require it to prove its case." *Gen. Tel. Corp. v. Gen. Tel. Answering Serv.*, 277 F.2d 919, 921 (5th Cir.1960). The fact that Defendant's answer was filed one month after it was due will not prejudice Plaintiff in attempting to find witnesses or relying on witnesses' memories. In addition, Defendant has put forward a meritorious defense to Plaintiff's claim which, if proven, would likely be dispositive—the legitimate, nondiscriminatory reason of fraud as justification for Plaintiff's termination. *Lacy*, 227 F.3d at 294.

Defendant has satisfied the three factors the Court looks to in determining good cause to set aside an entry of default. Defendant's motion to set aside the default, which the Court implied in the filing of Defendant's answer subsequent to the entry of default, is GRANTED (docket no. 6). Because the entry of default has been set aside, Plaintiff's motion for default judgment is DENIED (docket no. 7).

