STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

(FILED: April 9, 2013)

ALTRUI BROTHERS TRUCK SALES, INC. d/b/a ALTRUI BROTHERS FREIGHTLINER TRUCK SALES, INC. **Plaintiff,**	:	
v.	:	**C.A. No. PC 08-7187**
DAIMLERCHRYSLER VANS, LLC, n/k/a CHRYSLER VANS, LLC, DAIMLERCHRYSLER MOTORS CORPORATION, n/k/a CHRYSLER MOTORS, LLC, ELMWOOD DODGE AND BALD HILL REALTY CO. d/b/a BALD HILL DODGE **Defendants.**	:	

DECISION

PROCACCINI, J. Before this Court is a dispute between Altrui Brothers Truck Sales, Inc. d/b/a Altrui Brothers Freightliner Truck Sales, Inc. (Plaintiff) and Elmwood Dodge and Bald Hill Realty Co. d/b/a Bald Hill Dodge (Defendant), regarding the Defendant's authority to sell a particular van supplied by DaimlerChrysler Vans, LLC (DaimlerChrysler). Defendant brings before this Court its Motion to Vacate Entry of Default and Objection to Plaintiff's Motion for Entry of Default Judgment. Jurisdiction is pursuant to Super. R. Civ. P. 55(c).

I

Facts and Travel

On October 19, 2001, the Plaintiff entered into a franchise agreement with

DaimlerChrysler, also a defendant in this case.[1] The agreement recognized the Plaintiff as an authorized franchise holder with DaimlerChrysler and authorized it to sell a vehicle supplied by DaimlerChrysler known as a Sprinter Van. The agreement further recognized the Plaintiff as a sole authorized seller of these vans within the "relevant market area."[2]

In 2007, the Plaintiff filed a complaint in the Superior Court, alleging that the Defendant and another Dodge dealer were selling a vehicle identical to the Sprinter Van, which DaimlerChrysler supplied to the Plaintiff. The Plaintiff alleged that this arrangement violated section 31-5.1-4.2 of the Rhode Island General Laws, which requires that a manufacturer provide notice to each market dealer in the "relevant market area" of its intent to establish a dealership in that area where the same line or make will be sold. The provision further provides for hearings before the Department of Business Regulations/Dealers License and Regulation Office in advance of granting any new franchises for the same product line. The Plaintiff claimed that the Defendant violated the franchise agreement by selling and distributing a vehicle to another Dodge dealer that was identical to the Sprinter Van supplied to the Plaintiff, and sought injunctive relief.

Subsequently, the Plaintiff withdrew its initial complaint and proceeded with hearings before the Motor Vehicle Dealers License and Hearing Board (Board). On February 1, 2008, the Board found that the four-year statute of limitations did not bar the Plaintiff's complaint. The Board, however, indicated that it did not have jurisdiction to

[1] In April of 2009, DaimlerChrysler and DaimlerChrysler Motors Corporation filed for bankruptcy. All proceedings in this action were stayed against these defendants. The stay did not enjoin the Plaintiff from proceeding against the Defendant in this matter.

[2] The "relevant market area," as defined by section 31-5.1-1 of the Rhode Island General Laws, means an "area within a radius of twenty (20) miles around an existing dealer or the area of responsibility defined in the agreement, whichever is greater."

award injunctive relief to the Plaintiff. DaimlerChrysler then appealed the Board's decision to the Department of Administration. The Department of Administration affirmed that the Board did not have jurisdiction to grant the relief requested by the Plaintiff. The decision of the Department of Administration further found that the Board's decision was not a finding on the merits. The Defendant retained counsel to litigate the case in 2007, when the Plaintiff initially served the 2007 complaint, and throughout the administrative proceedings.

The following year, in November of 2008, the Plaintiff refiled its initial action as PC 08-7187 (Complaint) against two Chrysler manufacturers and three Rhode Island automobile dealers, including the Defendant. The Complaint sought injunctive relief against the Defendants and damages in excess of three million dollars. Allegedly, the Plaintiff served the Defendant through its agent for service, Attorney John S. DiBona, on November 13, 2008. The agent contends that he forwarded a letter to Elmwood Dodge Corporate President, Jay L'Archevesque, indicating that the Complaint was being forwarded to Elmwood Dodge.

The Defendant did not file an answer to the Complaint, and the Plaintiff requested an Entry of Default, which was granted in February of 2009. According to the Defendant, its registered agent purports to have sent the Complaint with a cover letter but the Defendant, "has no record or recollection of having received the 2008 Complaint in that fashion." (L'Archevesque Aff. ¶ 7.) The Defendant also alleges that it was not aware that the 2008 Complaint was filed and that the Defendant, its agent and its counsel did not receive notice of the Entry of Default. Nearly four years later, on September 20, 2012, the Plaintiff filed a Motion for Entry of Default Judgment against the Defendant.

The Defendant claims that it became aware of the Entry of Default when the Plaintiff filed its Motion for Entry of Default Judgment.

The Defendant has filed a Motion to Vacate the Entry of Default and an Objection to Plaintiff's Motion for Entry of Default Judgment. These are the motions currently before this Court.

II

Standard of Review

"'Judgment by default is a drastic remedy which should only be employed in extreme situations.'" McKinney & Nazareth, P.C. v. Jarmoszko, 774 A.2d 33, 36-37 (R.I. 2001) (quoting Medeiros v. Hilton Homes, Inc., 122 R.I. 406, 410, 408 A.2d 598, 600 (1979)). Rule 55 of the Rhode Island Rules of Civil Procedure governs defaults. Rule 55(a) provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." After default is entered, judgment by default may be entered pursuant to Rule 55(b). To vacate an entry of default before a default judgment is entered, a party must show "good cause" under Rule 55(c). Reyes v. Providence Place Grp., L.L.C., 853 A.2d 1242, 1246 (R.I. 2004).

Our Supreme Court has explained that "the only showing required for removing [a] default [is] good cause and not the mistake, inadvertence, surprise, or excusable neglect showing which would [be] demanded under [Rule] 60(b), had the default been followed by the subsequent entry of a final judgment." Id. at 1247 (quoting Berberian v. Petit, 118 R.I. 448, 452, 374 A.2d 791, 793 (1977)) (internal quotation marks omitted).

The "good cause" threshold for relief from default is lower and more easily overcome than that necessary for relief from judgment. Coon v. Grenier, 867 F.2d 73, 76 (1st Cir. 1989). "'[W]here there are no intervening equities, any doubt [about the existence of good cause,] should as a general proposition, be resolved in favor of the movant' so that the issue can be decided on the merits." Reyes, 853 A.2d at 1247 (quoting Berberian, 118 R.I. at 452-53, 374 A.2d at 793). A motion to vacate a default "'may be granted whenever the court finds that the default was not the result of gross neglect, that the nondefaulting party will not be substantially prejudiced by the reopening, and the party in default has a meritorious defense.'" Id. (quoting Sec. Pac. Credit (Hong Kong) Ltd. v. Lau King Jan, 517 A.2d 1035, 1036 (R.I. 1986)). When these three prongs are satisfied, the "good cause" standard is met. Id. Additionally, in cases involving large sums of money, our courts resolve doubts in favor of vacating entries of default. Id.

III

Analysis

As a general principle, Rhode Island courts have given Rule 55(c) a "liberal interpretation." See Coon, 867 F.2d at 76 ("[A] liberal approach is least likely to cause unfair prejudice to the nonmovant . . . ."); Sec. Pac. Credit, 517 A.2d at 1036 (The "rather liberal interpretation of Rule 55(c) is in accord with the interpretation given to its federal counterpart Fed. R. Civ. P. 55(c) . . . ."). For example, in Bahosh v. Klein, the plaintiffs filed a complaint against the defendants regarding an automobile collision. Bahosh v. Klein, 688 A.2d 861, 861 (R.I. 1997). The defendants claimed that they had not received notice of the action until about five days before the hearing on the motion for entry of default. Id. Our Supreme Court held that "lack of actual notice of the summons and

complaint . . . was ample ground upon which the motion justice should have vacated the default." Id. Similarly, in Coon, the defendant moved to set aside an entry of default in a personal injury action involving an automobile collision. Coon, 867 F.2d at 74. The First Circuit Court of Appeals found that there was no indication that the defendant "consciously sought to evade process." Id. at 76. Consequently, the First Circuit remanded the case with instructions to vacate the default. Id. at 79.

In this case, this Court finds that there is good cause to grant the Defendant's Motion to Vacate the Entry of Default. The Defendant's failure to file an answer was not the result of gross neglect. The Defendant retained counsel to represent it in connection with the 2007 complaint and administrative hearing. Allegedly, the Defendant was unaware that the 2008 Complaint was filed or that an Entry of Default was granted in February of 2009. Despite its registered agent's claim that he forwarded a cover letter and copy of the 2008 Complaint, the Defendant also maintains that it did not receive a copy of the Complaint "in that fashion." (L'Archevesque Aff. ¶ 7.) Upon becoming aware of the Motion for an Entry of Judgment by Default, the Defendant claims it took immediate action. No evidence has been offered establishing that the Defendant purposely or consciously attempted to evade its duties. See id. at 77-78 (stating that "to the extent that timing plays a role, two circumstances counsel towards leniency: on the one hand, plaintiff appears to have set a leisurely pace in filing suit and pressing his claim; on the other hand, [the defendant] moved to vacate the default immediately upon learning of the action").

The Plaintiff presents compelling arguments in favor of denying the Motion to Vacate, and indeed, this Court recognizes that this case is a close call. The Plaintiff

correctly followed the Superior Court Rules of Civil Procedure by serving the Defendant, a sophisticated litigant, through its agent for service. The new action bore a new filing number, and additional defendants were added to the 2008 Complaint. The Plaintiff also submitted evidence that the agent accepted service on behalf of the Defendant. The agent then forwarded a letter to Elmwood Dodge Corporate President, Jay L'Archevesque, indicating that the Complaint was being forwarded to the Defendant, Elmwood Dodge. Nevertheless, given the liberal interpretation of Rule 55(c) and the general policy of resolving doubts about the existence of good cause in favor of the movant, this Court finds that the Defendant's actions were not the result of gross neglect. See Conetta v. Nat'l Hair Care Centers, Inc., 236 F.3d 67, 75 (1st Cir. 2001); Sec. Pac. Credit, 517 A.2d at 1036; Berberian, 118 R.I. at 452, 374 A.2d at 793.

Furthermore, the Plaintiff will not be substantially prejudiced by reopening this case. This case has been pending for over four years. The Plaintiff filed the original complaint in 2007 and a subsequent Complaint in 2008. The Entry of Default was granted in 2009. Nearly four years later, in 2012, the Plaintiff moved for default judgment. The Plaintiff neither explains why it waited three years to file a Motion for Default Judgment nor does it present any argument as to how it would be prejudiced by reopening this case. In Coon, the First Circuit refused to "infer prejudice merely from the passage of the amount of time involved . . . where plaintiff was apparently content to wait for close to a year and a half before instituting suit, and then waited for over another full year between effecting substituted service and requesting entry of default." Coon, 867 F.2d at 77. Likewise, this Court will not infer prejudice from the passage of time. There is no claim that evidence has been lost, that witnesses are unavailable, or that discovery

will be frustrated. On the contrary, the Defendant claims that no discovery has been conducted since the Entry of Default. For these reasons, this Court concludes that the Defendant meets the second requirement of the "good cause" standard in that the Plaintiff will not be substantially prejudiced by removal of this default. See Reyes, 853 A.2d at 1247.

As to the final requirement, this Court finds that the Defendant has presented meritorious defenses. A meritorious defense must "plausibly suggest the existence of facts which, if proven at trial, would constitute a cognizable defense." Coon, 867 F.2d at 77. The movant does not need to demonstrate a likelihood of success. Id. Here, the Defendant has presented numerous plausible defenses, including the allegation that no contract existed between the Plaintiff and Defendant, that damages are the result of actions or inactions by parties for whom the Defendant is not responsible, that the Plaintiff has been unjustly enriched, and that the Plaintiff has failed to exhaust the administrative remedies that it chose to pursue. This Court finds these defenses to be plausible. See id. at 77; Reyes, 853 A.2d at 1247.

Finally, this Court notes that Plaintiff represents that its damages exceed three million dollars, another factor that weighs in favor of removing the default. See Reyes, 853 A.2d at 1247 ("resolving doubts in favor of removing default in actions 'where large sums of money are involved in the suit'") (quoting R.C. Associates v. Centex Gen. Contractors, 810 A.2d 242, 245 (2002)). For all of these reasons and in consideration of the policy of removing defaults and litigating cases on the merits, this Court finds all of the requirements necessary to vacate this default have been satisfied.

IV

Conclusion

Upon review of the entire record, this Court concludes that the Defendant's failure to answer the Complaint was not the result of gross neglect; the Plaintiff will not be substantially prejudiced by the reopening of this case; and the Defendant presents meritorious defenses. Thus, the Defendant's Motion to Vacate the Entry of Default is granted and the Plaintiff's Motion for Entry of Default Judgment is dismissed as moot.

RHODE ISLAND SUPERIOR COURT
Decision Addendum Sheet

TITLE OF CASE:	Altrui Brothers Truck Sales, Inc. d/b/a Altruit Brothers Freightliner Truck Sales, Inc. v. DaimlerChrysler Vans, LLC, n/k/a Chrysler Vans, LLC, et al.
CASE NO:	PC 2008-7187
COURT:	Providence County Superior Court
DATE DECISION FILED:	April 9, 2013
JUSTICE/MAGISTRATE:	Procaccini, J.
ATTORNEYS:	
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