

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR KENT COUNTY

LARRY D. MARVEL,	:	
	:	C.A. No. 05C-03-013 WLW
Plaintiff,	:	
	:	
v.	:	
	:	
PRISON INDUSTRIES a/k/a State	:	
of Delaware Department of	:	
Correction,	:	
	:	
Defendant.	:	

Submitted: February 17, 2006

Decided: May 25, 2006

ORDER

Upon Defendant State of Delaware's Motion to Set Aside Default Judgment. Granted. Motion to Stay Execution. Moot. Motion for Enlargement of Time to Answer Amended Complaint. Granted.

David A. Felice, Esquire of Cozen O'Connor, Wilmington, Delaware; attorneys for the Plaintiff.

Ophelia M. Waters, Esquire, State of Delaware, Department of Justice, Wilmington, Delaware; attorneys for the State Defendant.

WITHAM, R.J.

Before this Court are three motions filed by Defendant, State of Delaware Department of Correction: (1) Motion to Set Aside the Default Judgment, (2) Motion to Stay Execution, and (3) Motion for Enlargement of Time to File an Answer to the Amended Complaint. Each motion will be discussed *seriatim* below.

Motion to Set Aside the Default Judgment:

Defendant filed a Motion to Set Aside the Default Judgment entered by Plaintiff, Larry Marvel, on January 23, 2006 pursuant to Superior Court Civil Rule 55(b)(1).¹ Defendant argues that the entry of default judgment was in violation of Rule 55(b)(1) because a motion to dismiss had already been filed and argued; thus, Defendant's attorney had already entered her appearance. Plaintiff conceded that he was not able to enter a default judgment pursuant to Rule 55(b)(1), so he requested that this Court entertain his written directive for entry of a default judgment filed with the Prothonotary as an application for default judgment pursuant to Rule 55(b)(2). In support of his Rule 55(b)(2) motion, Plaintiff argues: (1) the indisputable facts demonstrate that Defendant's actions and failure to act caused Plaintiff's injuries; (2) the law of the case holds that Defendant is not protected by a defense of sovereign

¹Rule 55(b) reads, in pertinent part, "when a party against whom a judgment for affirmative relief is sought, has failed to appear, plead or otherwise defend . . . judgment by default may be entered as follows: (1) By the Prothonotary. When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the Prothonotary upon written direction of the plaintiff and upon affidavit of the amount due shall enter judgment for that amount and costs against the defendant, if the defendant failed to appear in accordance with these Rules . . . (2) By the Court. In all other cases, the party entitled to a judgment by default shall apply to the Court therefor"

immunity for breach of contract claims; and (3) Defendant continues to reject its obligation to substantively respond to all claims presented in the Amended Complaint.

For the reasons set forth below, Defendant's Motion to Set Aside the Default Judgment is *granted*.

Discussion

"Rule 55(b)(1) provides that default judgment may be entered by the Prothonotary upon written direction of the plaintiff if the plaintiff's claim is for a sum certain and the defendant has failed to appear. Rule 55(b)(2) provides that in all other cases, a party entitled to a judgment by default shall apply to the court therefore."² While *Pinkett* held that "there is no hard and fast rule that the filing of an entry of appearance or an untimely answer renders default judgment 'unavailable,'" Plaintiff must seek default judgment in a proper manner. Because there was an entry of appearance, effected by Defendant's counsel filing and arguing a motion to dismiss, Plaintiff was required to file for default judgment pursuant to Rule 55(b)(2).³ This is the appropriate manner because it necessitates Defendant receiving notice of the application for default judgment.⁴

Because Plaintiff realized his error, presumably upon reading Defendant's

²*Pinkett v. Nationwide Mut. Ins. Co.*, 832 A.2d 747, 749 (Del. Super. 2003).

³*Id.* at 750.

⁴*Id.*

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Opposition to Entry of Default Judgment and the motion currently under consideration, he requested that this Court treat his written directive for entry of default judgment as a motion for default judgment pursuant to Rule 55(b)(2). Clearly, this Court has discretion to either grant or deny a motion for default judgment when an appearance has been entered but no answer has been filed.⁵ However, it is the preference of the courts in Delaware to decide cases on the merits.⁶ Further, the Supreme Court of this State opined that based on the public policy of determining cases on the merits, “any reasonable doubt is resolved in favor of the party seeking relief from the default judgment.”⁷

Based on the foregoing, Defendant’s Motion to Set Aside the Default Judgment is *granted*.

Motion to Stay Execution:

Because this Court decided to set aside the default judgment in favor of hearing the case on its merits, the Motion to Stay Execution is *moot*.

Motion for Enlargement of Time to File an Answer to the Amended Complaint:

Defendant filed a Motion for Enlargement of Time to File an Answer to the Amended Complaint. The Complaint was filed in this case on March 9, 2005. Defendant asserts that it filed a motion to dismiss on March 30, 2005 in lieu of filing

⁵*Id.*

⁶*Old Guard Ins. Co. v. Jimmy’s Grille, Inc.*, 2004 Del. LEXIS 417, at *7.

⁷*Id.*

an Answer. Defendant also contends that it still did not file an Answer after this Court denied the Motion to Dismiss on August 23, 2005, because it believed that the action was stayed pending Plaintiff's completion of discovery on the insurance coverage issue. Defendant explains that it did not file an Answer to the Amended Complaint filed on January 5, 2006 because it understood its Motion to Dismiss to be a responsive pleading, thereby requiring Plaintiff to seek leave from this Court to amend its original Complaint. In Plaintiff's response, he requests that this Court not permit Defendant to file its Answer as proposed because the Answer includes denials of factual allegations that were clearly established in the federal action, as well as affirmative defenses that address the federal claims.

For the reasons set forth below, Defendant's Motion for Enlargement of Time to File an Answer to the Amended Complaint is *granted*.

Discussion

Superior Court Civil Rule 6(b) governs enlargement of time and reads, in pertinent part, as follows:

Enlargement. When by these Rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the Court for cause shown may at any time in its discretion . . . (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect

A thorough explanation of excusable neglect and the granting of an

enlargement of time was provided in *Ewing v. Bice*.⁸ In *Ewing*, the court elucidated:

“Excusable neglect” has been defined as “that neglect which might have been the act of a reasonably prudent person under the circumstances.” Mere negligence or carelessness without a valid reason does not necessarily constitute excusable neglect. “Whether a party’s failure to act constitutes excusable neglect is a matter of judicial discretion.” When determining excusable neglect, Rule 6(b) permits the Court to enlarge the time for moving where good cause is shown, absent bad faith on the part of the movant and undue prejudice to the other parties to the suit. The Court should liberally grant discretionary extensions. Furthermore, Delaware public policy favors giving a litigant his day in court.⁹

In the case *sub judice*, there was no bad faith on the part of Defendant, nor would there be undue prejudice to Plaintiff. Defendant presented understandable reasons for failing to file an Answer. It also appears as though Defendant acted as a reasonably prudent person would have under the circumstances. These determinations, in light of the public policy that favors deciding cases on the merits, require this Court to find that excusable neglect exists.¹⁰

⁸2001 Del. Super. LEXIS 278.

⁹*Id.* at *17-18 (citations omitted).

¹⁰It is noted that whether the denials of factual allegations were established or not in the Federal action as well as whether affirmative defenses were addressed in the Federal action are not matters to be resolved today.

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Based on the foregoing, Defendant's Motion for Enlargement of Time to File an Answer to the Amended Complaint is *granted*.

IT IS SO ORDERED.

/s/ William L. Witham, Jr.
Resident Judge

WLW/dmh

oc: Prothonotary

xc: Counsel