

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 09-cv-02788-CMA-MJW

MICROSOFT CORPORATION, a Washington corporation,

Plaintiff,

v.

SEIFELDEN ELECTRONICS, LLC, a Colorado limited liability company, and
WALEED DABBOUR, an individual,

Defendants.

**ORDER GRANTING MOTION TO SET ASIDE DEFAULT JUDGMENT AGAINST
DEFENDANT SEIFELDEN ELECTRONICS, LLC**

This matter is before the Court on a Joint Motion to Set Aside Default Judgment (Doc. # 33), which was filed by Plaintiff Microsoft Corporation (“Microsoft”) and Defendants Seifelden Electronics, LLC and Waleed Dabbour. For reasons discussed below, the Motion is GRANTED.

I. BACKGROUND

On June 16, 2010, the Court issued an Order Affirming and Adopting April 5, 2010 Recommendation of United States Magistrate Judge Michael J. Watanabe that default judgment be entered against Defendant Seifelden Electronics for failure to obey court orders set forth at a March 8, 2010 Rule 16 Scheduling Conference. (Doc. # 17.) At that Conference, Seifelden Electronics was advised that it could not appear before the Court without counsel, in accordance with the Court’s local rules and current case

law. (Doc. # 13.) Seifelden Electronics was directed to retain counsel and warned that failure to do so would result in default judgment.

At an April 5 discovery conference, counsel once again did not appear on behalf of Seifelden. This prompted Magistrate Judge Watanabe's recommended entry of default judgment. No objections were filed to this Recommendation. Accordingly, this Court reviewed the Recommendation for clear error and, finding no clear error, affirmed and adopted the Recommendation on June 16, 2010. (Doc. # 22 at 2.)

Pursuant to the Court's affirmation and adoption of Magistrate Judge Watanabe's Recommendation, the Clerk of Court entered Default Judgment in favor of Plaintiff Microsoft and against Defendant Seifelden Electronics. (Doc. # 23.)

On August 26, 2010, the parties filed the instant Joint Motion to Set Aside Default Judgment. (Doc. # 33.) The parties indicate that they have reached a settlement agreement, which necessitates the setting aside of the default judgment. (*Id.*)

II. ANALYSIS

Pursuant to Fed. R. Civ. P. 55(c), a court may set aside an entry of default for "good cause." "[T]he principle factors in determining whether defendant has met the good cause standard are: (1) whether the default was the result of culpable conduct of the defendant, (2) whether the plaintiff would be prejudiced if the default should be set aside, and (3) whether defendant has presented a meritorious defense." *Rodgers v. Rieke*, No. 98-2147, 1998 WL 596729, at *1 (D. Kan. July 31, 1998) (unpublished)

(citing *Hunt v. Ford Motor Co.*, No. 94-3054, 1995 WL 523646, at *3 (10th Cir. Aug. 29, 1995) (unpublished)). The court need not consider all these factors. (*Id.*)

In the instant case, the second factor supports setting aside the default judgment; the parties have reached a settlement and have filed a Joint Motion to Set Aside Default Judgment. Clearly, then, Plaintiff would not be prejudiced if the default was set aside.

Accordingly, for the foregoing reasons,

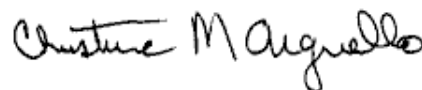
IT IS ORDERED that the parties' Joint Motion to Set Aside Default Judgment (Doc. # 33) is GRANTED.

IT IS FURTHER ORDERED that the Clerk of Court shall set aside the default judgment entered in favor of Plaintiff Microsoft Corporation and against Defendant Seifelden Electronics, LLC, on June 16, 2010.

IT IS FURTHER ORDERED that the parties shall file the pertinent settlement documents with the Court by no later than September 23, 2010.

DATED: September 9, 2010

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge