

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

BAYARDO VILCHEZ,

Plaintiff,

v.

Case No: 2:16-cv-652-FtM-99CM

3F MANAGEMENT, LLC,

Defendant.

ORDER

This matter comes before the Court upon review of Plaintiff's Motion for Clerk's Default Against Defendant 3F Management, LLC (Doc. 9) filed on October 25, 2016. Plaintiff seeks, pursuant to Federal Rule of Civil Procedure 55(a), entry of Clerk's default against Defendant for failure to plead or defend.

On August 25, 2016, Plaintiff filed a Complaint pursuant to the Fair Labor Standards Act, as amended, 29 U.S.C. §201, *et seq.* Doc. 1. Plaintiff's Return of Service shows that Plaintiff served a copy of the Summons and Complaint and Demand for Jury Trial on an employee of Defendant's registered agent on September 16, 2016. Doc. 8. On October 25, 2016, Plaintiff filed the present motion. On the following day, Defendant's attorney filed a Notice of Appearance (Doc. 10), which was followed by Defendant's Answer and Affirmative Defenses on October 27, 2016. Doc. 11.

Pursuant to Federal Rule of Civil Procedure 55(a), "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise

defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Similarly, Middle District of Florida Local Rule 1.07(b) provides:

When service of process has been effected but no appearance or response is made within the time and manner provided by Rule 12, Fed. R. Civ. P., the party effecting service shall promptly apply to the Clerk for entry of default pursuant to Rule 55(a), Fed. R. Civ. P.

M.D. Fla. R. 1.07(b). Prior to directing the Clerk to enter a default, the Court must first determine whether Plaintiff properly effected service of process. *United States v. Donald*, No. 3:09-cv-147-J-32HTS, 2009 WL 1810357, at *1 (M.D. Fla. June 24, 2009).

Service on a corporation can be made by any manner accepted in the state or "by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process[.]" Fed. R. Civ. P. 4(h)(1)(A), (e)(1). Section 48.081, Florida Statutes, provides a hierarchy for service of process upon a corporation. A private corporation may be served by serving process on the president, vice president, or other head of the corporation, and in the absence of any such persons, on other corporate employees, including any officer or director. Fla. Stat. § 48.081(1)(a)-(d). As an alternative, process may be served on a registered agent of the corporation, or an employee of the registered agent. *Id.* § 48.081(3)(a).

Here, although Plaintiff properly effected service pursuant to section 48.081(3)(a), Florida Statutes, "[c]ourts have a longstanding policy favoring adjudication of lawsuits on the merits, thus defaults are disfavored." *Bateh v. Colquett D. Trucking, Inc.*, 2011 WL 4501385, *1 (M.D. Fla. 2011) (citing *Kilpatrick*

v. Town of Davie, 2008 WL 3851588 (S.D. Fla. 2008). Simply because a defendant fails to timely respond to complaint, it does not show an intentional or reckless disregard for judicial proceedings. *Id.* Here, Defendant filed an answer two days after Plaintiff filed the present motion. Plaintiff will not be prejudiced by the minimal delay as this case is still in the early stages of litigation. The Court also considers whether there is a meritorious defense to Plaintiff's claims, and a "mere 'hint of a suggestion' that there is a meritorious defense to the claims alleged is sufficient." *Id.* (internal citation omitted). Here, Defendant's Answer and Affirmative Defenses provides a "hint of a suggestion" of a meritorious defense to Plaintiff's alleged claims. Thus, the Court finds that the entry of Clerk's default is not appropriate in this instance.

ACCORDINGLY, it is hereby

ORDERED:

Plaintiff's Motion for Clerk's Default Against Defendant 3F Management, LLC (Doc. 9) is **DENIED**.

DONE and **ORDERED** in Fort Myers, Florida on this 28th day of October, 2016.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record