

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

GUADALUPE ADAMS,

Plaintiff,

vs.

Case No. 18-1039-JTM

WINFIELD HOSPITALITY, INC.,

Defendant.

MEMORANDUM AND ORDER

This matter is before the court on the defendant's motion to set aside the default previously entered by the Clerk of the Court, and for extension of time to answer. (Dkt. 9).

Under Fed. R.Civ.P. 55(c), the court may set aside an entry of default for good cause. This standard is a less demanding standard than the excusable neglect which must be shown for relief from judgment under Fed.R.Civ.P. 60(b). *See Dennis Garberg & Assocs. v. Pack-Tech Int'l*, 115 F.3d 767, 775 n.6 (10th Cir.1997). The standard is liberal because "the preferred disposition of any case is upon its merits and not by default judgment." *Gomes v. Williams*, 420 F.2d 1364, 1366 (10th Cir.1970).

In deciding whether to vacate a default, the court will consider (1) whether the defendant's culpable conduct led to the default; (2) whether plaintiff will be prejudiced by setting aside the entry of default; and (3) whether defendant has a meritorious defense.

Gilmore v. Carlson, 72 Fed.Appx. 798, 801 (10th Cir.2003). “A court need not consider all of the factors, and may consider other factors as well.” *Guttman v. Silverberg*, 167 Fed.Appx. 1, 4 (10th Cir.2005). The decision to set aside an entry of default lies within the discretion of the trial court. *Ashby v. McKenna*, 331 F.3d 1148, 1152 (10th Cir.2003).

Here, default was entered after the plaintiff obtained service of process on “Magi Bhakta as Authorised Agent” for Winfield Hospitality, Inc., (Dkt. 4). The defendant argues that no proper service was obtained, as the agent actually authorized to accept service is Jagdish Bhakta, according to records from the Kansas Secretary of State.

Defendant further stresses that it has acted promptly to cure the default (filing its motion less than two weeks after default was entered), and that plaintiff will not be prejudiced by setting the default aside. The plaintiff has filed no response to the motion to set aside.

For good cause shown, and pursuant to D.Kan.R. 7.4, the court hereby grants the defendant’s motion. (Dkt. 9). Defendant shall file an answer to the complaint no later than 14 days from the present Order.

IT IS SO ORDERED this 22nd day of May, 2018.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE