

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
ABERDEEN DIVISION

SHANNON EASLEY

PLAINTIFF

VS.

CIVIL ACTION NO. 1:16CV213-SA-DAS

SCHILLING FOODS, LLC,
AND SUPERVALU, INC.

DEFENDANTS

AGREED ORDER

Before the Court for consideration is a Motion to Set Aside Clerk's Entry of Default pursuant to Rule 55(c), Federal Rules of Civil Procedure, [Dkt. 16], filed by the Defendant, Schilling Foods, LLC, (hereinafter "Schilling Foods").

A Complaint was filed by the Plaintiff against the Defendants, Schilling Foods and Super Valu, Inc., on November 30, 2016. A waiver of the service of a summons, [Dkt. 10], was executed by Don Schilling, III, on January 30, 2017, ostensibly on behalf of Schilling Foods, which indicated that Schilling Foods had sixty (60) days from December 20, 2016, to answer or responsively plead to the Plaintiff's Complaint. While Don Schilling, III, is a minority member of Schilling Foods, he is not an officer, the managing member, or the registered agent for process. Accordingly, in its motion to set aside, Schilling Foods asserted that the request for the waiver of process was not addressed to a person or entity designated in Rule 4(d)(1)(A)(ii), Federal Rules of Civil Procedure. Because no answer or responsive pleading was filed within the sixty (60) day period set forth on the wavier of process, the Plaintiff filed an application with the clerk for an entry of default on February 23, 2017, [Dkt. 14], and the clerk entered a default on February 24, 2017, [Dkt. 15].

The Plaintiff and Schilling Foods have agreed that the clerk's entry of default should be set aside, provided that Don V. Schilling, the designated registered agent for process, execute a waiver of the service of a summons and enter an appearance in this cause on behalf of Schilling Foods. Schilling Foods is agreeable to this procedure, and will file its Answer and Affirmative Defenses within ten (10) days thereafter, in a form consistent with its proposed Answer and Affirmative Defenses, which was attached as Exhibit "B" to its motion to set aside.

The Court is of the opinion that the terms and provisions of this Agreed Order are reasonable and should be approved.

IT IS, THEREFORE, ORDERED AND ADJUDGED as follows:

(a) The Clerk's Entry of Default, [Dkt. 15], entered in this cause of action on February 24, 2017, should be set aside. As such, the Motion to Set Aside Clerk's Entry of Default pursuant to Rule 55(c), Federal Rules of Civil Procedure, is sustained.

(b) That Don V. Schilling, the registered agent for process for Schilling Foods, shall execute a waiver of the service of a summons and enter the appearance of Schilling Foods in this cause of action.

(c) That within ten (10) days after the execution of the waiver of the service of a summons, Schilling Foods shall file its Answer and Affirmative Defenses in a form consistent with Exhibit "B," attached to its Motion to Set Aside Clerk's Entry of Default.

IT IS SO ORDERED this the 20th day of March, 2017.

/s/ Sharion Aycock
UNITED STATES DISTRICT JUDGE