

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|--------------------------|
| COMMUNITY VOCATIONAL |) | CIVIL ACTION NO. 09-1572 |
| SCHOOLS OF PITTSBURGH, INC., a |) | |
| corporation, individually and as the |) | |
| representative of a class of similarly situated |) | |
| persons, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| MILDON BUS LINES, INC., a Pennsylvania |) | |
| corporation, |) | |
| |) | |
| Defendant/ Third Party Plaintiff, |) | |
| |) | |
| v. |) | |
| |) | |
| CAROLINE ABRAHAM and JOEL |) | |
| ABRAHAM, |) | |
| |) | |
| Third Party Defendants. |) | |

MEMORANDUM OPINION

Conti, Chief District Judge

On December 20, 2016, defendant Mildon Bus Lines (“Mildon”), filed a third-party complaint against third-party defendants Caroline Abraham and Joel Abraham for contribution and indemnity; common law fraud; and negligence. (ECF No. 53.) Neither Caroline Abraham nor Joel Abraham filed any response to the third-party complaint. On April 13, 2017, Mildon filed a motion for default judgment against Caroline Abraham and Joel Abraham, (ECF No. 83), and requested that the Clerk of Court enter defaults against them. (ECF Nos. 89, 90). The Clerk of Court entered the defaults on April 18, 2017. (ECF Nos. 89, 90).

Federal Rule of Civil Procedure 55 permits a court to enter default judgment.

Three factors control whether a default judgment should be granted: (1) prejudice to the plaintiff if default is denied, (2) whether the defendant appears to have a litigable defense, and (3) whether defendant's delay is due to culpable conduct.

Chamberlain v. Giampapa, 210 F.3d 154, 164 (3d Cir. 2000) (citing United States v. \$55,518.05 in U.S. Currency, 728 F.2d 192, 195 (3d Cir. 1984)). "The district court has the discretion to enter default judgment, although entry of default judgments is disfavored as decisions on the merits are preferred." Super 8 Motels, Inc. v. Kumar, No. 06-5231, 2008 WL 878426, at *3 (D.N.J. Apr. 1, 2008) (citation omitted). Courts are less inclined to follow Chamberlain where a defendant has been in default and has failed to respond to a motion for default. Broadcast Music, Inc. v. George Moore Enters., 184 F.Supp.3d 166, 170 (W.D. Pa. 2016).

By order dated February 9, 2018, the court granted summary judgment in favor of defendant Mildon and against plaintiff Community Vocational Schools of Pittsburgh, Inc., which would appear to moot Mildon's requested relief against Caroline Abraham and Joel Abraham with respect to the claims for contribution and indemnity, but did not resolve the claims for common law fraud and negligence. The court will deny Mildon's present motion for default judgment, and will permit a renewed motion for default judgment to be filed subsequent to the court setting and holding a status conference after the deadline for filing a motion to substitute a new plaintiff as class representative has expired.

DATED: February 9, 2018

BY THE COURT:

/s/ Joy Flowers Conti
Joy Flowers Conti
Chief United States District Judge