

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-15-104

KHERALLAH SALLEH,

Plaintiff

v.

TRAVELERS CASUALTY INSURANCE
CO., et al.,

Defendants

STATE OF MAINE
Cumberland County Clerk's Office
JUN 23 2015
RECEIVED

Before the court is a motion by defendant Michals Insurance Agency Inc. to set aside the default entered against it on March 27, 2015.

The papers filed by the parties indicate that between October 2014 and January 2015, there were communications between plaintiff's counsel and both defendants and their insurers to explore settlement. On March 1, 2015 plaintiff's counsel, who had not heard back since late January, sent the complaint to the sheriff's office for service on the defendants. Although not obliged to so, plaintiff's counsel did not inform defendants or their insurers that he was commencing a lawsuit.

On March 5, 2015 service was made on Registered Agency Solutions Inc. in Portland. Registered Agency Solutions Inc. is the registered agent for service of process on the Michals Agency, which is based in Watertown, Massachusetts.

On March 16, 2015 plaintiff filed the complaint and the return of service on the Michals Agency.

On March 27, 2015, two days after the expiration of the 20 day time limit for the filing of a responsive pleading, plaintiff sought an entry of default and a default judgment against the Michals Agency. A default was entered, but the court declined to enter a default judgment, concluding that a hearing was required.

On April 6, 2015, 12 days after the expiration of the 20 day time limit for the filing of a responsive pleading and 10 days (six business days) after the entry of default, counsel filed an appearance for the Michals Agency along with the instant motion to set aside the default, a motion for leave to file a late answer, and the late answer that the Michals Agency proposed to file.

On a motion pursuant to Rule 55(c) the moving party must show a good excuse for the untimeliness in pleading and the existence of a meritorious defense. E.g., Thomas v. Thompson, 653 A.2d 417, 419-20 (Me. 1995). Motions to set aside defaults have been granted in cases where no “gross neglect” was involved in the late filing, where the nondefaulting party will not be substantially prejudiced, and where a meritorious defense exists. Id., 653 A.2d at 420, citing 10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure: Civil* § 2696 (1983).

In this case the court can discern no prejudice to plaintiff Kherallah Salleh from the one week delay in the filing of the Michals Agency’s answer. Moreover, the Michals Agency has raised potentially meritorious defenses for purposes of M.R.Civ.P. 55(c). *See Hamby v. Thomas Realty Associates*, 617 A.2d 562, 564 (Me. 1992) (moving party’s assertion of facts supporting potentially meritorious defense are assumed to be true on motion to set aside default). Indeed, Salleh’s opposition to the Michals Agency’s Rule 55(c) motion is based entirely on the contention that the Michals Agency has not shown a sufficiently good excuse for the default.

The record before the court establishes that after the complaint was served on March 5, it was sent by Federal Express to the Michals Agency in Watertown, where it arrived on March 10. Both of the owners and managers of the Michals Agency were on vacation on March 10, and the Federal Express package was placed on the desk of the Agency's part time bookkeeper, where it was found unopened after the co-owner and co-manager of the Michals Agency was informed that a default had been entered.

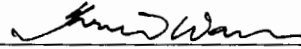
The "good cause" standard under Rule 55(c) is a less stringent standard than the "excusable neglect" standard that would have to be met under M.R.Civ.P. 60(b)(1) if a judgment had been entered. *Erskine v. Commissioner*, 682 A.2d 681, 684 (Me. 1996). Given that no gross neglect is apparent from this record, given the absence of any prejudice to Salleh, given that the Michals Agency acted promptly to set aside the default as soon as it learned that a default had been entered, and given that the answer was filed less than two weeks after it was originally due, the court finds that the Michals Agency has demonstrated the necessary good cause to set aside the default.

This is consistent with the strong preference for deciding cases on their merits. *See Thomas v. Thompson*, 653 A.2d at 419 (Me. 1995); *Millet v. Dumais*, 365 A.2d 1038, 1040 (Me. 1976), quoting Field McKusick & Wroth, *Maine Civil Practice* § 55.4 at 21-22 ("substantial rights should not be determined by default if that procedure can reasonably be avoided and no substantial prejudice has resulted"); 3 C. Harvey, *Maine Civil Practice* § 55:7 (2011).

The entry shall be:

The motion by defendant Michals Insurance Agency Inc. to set aside the default entered on March 27, 2015 and to file a late answer is granted. The clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: June 22, 2015



Thomas D. Warren
Justice, Superior Court

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Plaintiff