

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION**

LACEY BAKER,

Plaintiff,

vs.

SOUTHERN IOWA RESOURCE
FOR FAMILIES, INC.,

Defendant.

No. 4:07-cv-0197-JAJ

ORDER

This matter comes before the court pursuant to Plaintiff Lacey Baker's July 2, 2007, motion for default judgment (docket number 3) and Defendant Southern Iowa Resources for Families Inc.'s July 9, 2007, motion to set aside default entry (docket number 6). The motion for default judgment is denied. The motion to set aside default entry is granted.

The complaint in this matter was filed on May 8, 2007. Plaintiff alleges that Defendant permitted and/or perpetrated acts of sexual harassment and retaliation against Plaintiff in violation of Title VII of the Civil Rights Act of 1964. Plaintiff seeks compensatory and punitive damages, attorney fees, and court costs.

On May 21, 2007, service was made on Defendant Southern Iowa Resources for Families, Inc., via Director Rae Ann Tucker (docket number 2). Director Tucker forwarded the documents to its insurer, believing that the insurer bore the responsibility under an insurance policy to retain counsel for the defendant corporation. The defendant's responsive pleading was due on June 11, 2007.

On July 2, 2007, the plaintiff moved for default judgment against the defendant (docket number 3) pursuant to Rule 55 of the Federal Rules of Civil Procedure. Plaintiff's basis for the motion was Defendant's failure to file a responsive pleading on or before the due date of June 11, 2007. On July 3, 2007, the Clerk of Court for the Southern District

of Iowa entered default (docket number 4) against the defendant. The same day, Plaintiff sent a service copy of its motion for default judgment to Defendant via U.S. Mail.

On July 5, 2007, Defendant received a service copy of Plaintiff's motion for default judgment. Defendant retained counsel one day later. On July 9, 2007, Defendant moved to set aside the default entry (docket number 6). In the motion, Defendant asserted that its failure to meet the June 11, 2007 due date occurred because Director Tucker mistakenly believed that the insurer, instead of the defendant corporation, was responsible for retaining counsel under the policy. In an exhibit answer, Defendant denied the allegations Plaintiff made against it and asserted five affirmative defenses.

Fed. R. Civ. P. 55(c) provides, in pertinent part that "[f]or good cause shown the court may set aside an entry of default." Chief Judge Bennett discussed the applicable standard for setting aside a default (as compared to a default judgment) in Hayek v. Big Brothers/Big Sisters of America, 198 F.R.D. 518, 521 (N.D. Iowa 2001). Specifically, Judge Bennett noted that "[a]lthough the same factors are typically relevant in deciding whether to set aside entries of default and default judgments, "[m]ost decisions . . . hold that relief from a default judgment requires a stronger showing of excuse than relief from a mere default order." Id. at 521 (quoting Connecticut Nat'l Mortgage Co. v. Brandstatter, 897 F.2d 883, 885 (7th Cir.1990)); accord Shepard Claims Serv., Inc. v. William Darrah & Assocs., 796 F.2d 190, 193-94 (6th Cir.1986); Meehan v. Snow, 652 F.2d 274, 276-77 (2d Cir.1981). As in Hayek, the defendant in this case is entitled to the more lenient "good cause" standard in considering its motion to set aside.

Typically, relevant factors in determining "good cause" include whether the conduct of the defaulting party was blameworthy or culpable, whether the defaulting party has a meritorious defense, and whether the other party would be prejudiced if the default were excused. Hoover v. Valley West D M, 823 F.2d 227, 230 (8th Cir.1987); Johnson v. Dayton Elec. Mfg. Co., 140 F.3d 781, 783-84 (8th Cir. 1998) (relevant considerations in

deciding motion to set aside default include culpability of defaulting party, existence of meritorious defense, and prejudice to other party).

The conduct of the defendant in this case is not particularly “blameworthy” or “culpable.” Defendant’s belief that the insurer bore the responsibility to retain counsel was not an intentional ploy to delay litigation; rather, it was a mistake. Upon being served, Defendant acted in good faith to comply with the Rules by promptly forwarding the documents to the insurer to secure representation. The defendant subsequently attempted to communicate with the insurer about such representation. Upon notification of the default entry on July 5, 2007, the defendant immediately retained counsel on its own the following day. Three days later, the defendant filed its motion to set aside default entry. The defendant’s actions in this case do not rise to the level of culpability necessary to justify a default judgment.

The 27-day delay between the due date for Defendant’s responsive pleading and the date of filing of Defendant’s motion to set aside default entry has not prejudiced the plaintiff. Plaintiff submitted no discovery requests to Defendant during the 27-day time period. Accordingly, Plaintiff’s ability to obtain information from Defendant will not be inhibited by the delay. Similarly, the delay will not prejudice the plaintiff’s ability to prepare and present her case in any other respect.

The defendant has denied the allegations of the plaintiff and articulated a potentially meritorious defense in its motion to set aside default entry (docket number 6). Specifically, the defendant has asserted five affirmative defenses to the plaintiff’s claim against it. The existence of such defenses renders the remedy of a default judgment in appropriate in this case.

Upon the foregoing,

IT IS ORDERED

That the plaintiff’s motion for default judgment (docket number 3) is denied and defendant’s motion to set aside entry of default (docket number 6) is granted. The Clerk

of Court's entry of default entered in this matter on July 3, 2007 (docket number 4), is hereby set aside. The Clerk of Court shall file the defendant's answer.

DATED this 8th day of August, 2007.



JOHN A. JARVEY
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF IOWA