

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

RHODE ISLAND CARPENTERS :
ANNUITY FUND, et al. :
 :
v. : C.A. No. 04-163S
 :
TREVI ICOS CORPORATION :

REPORT AND RECOMMENDATION

Lincoln D. Almond, United States Magistrate Judge

This matter comes before the Court on Plaintiffs' Motion and Amended Motion for Entry of Judgment by Default (Document Nos. 6 and 18) and Defendant's Opposition and Cross-Motion to Set Aside the Entry of Default (Document No. 9) both filed pursuant to Fed. R. Civ. P. 55. These Motions have been referred to me for findings and recommendation. 28 U.S.C. § 636(b)(1)(B); Local Rule 32(c). A hearing was held on April 6, 2005. After reviewing the Memoranda submitted, listening to the arguments of counsel and conducting independent research, I recommend that the District Court GRANT Defendant's Cross-Motion to Set Aside the Entry of Default and DENY AS MOOT Plaintiffs' Motion and Amended Motion for Entry of Judgment by Default.

Background

Plaintiffs initiated this action on May 5, 2004 seeking to compel payment of fringe benefit contributions, interest and penalties pursuant to the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1001, et seq. On May 24, 2004, Plaintiffs filed a return of service executed on May 13, 2004 and signed by Ms. Nikki Mangio. Ms. Mangio is employed by Defendant as an

Executive Assistant. Aff. of Mangio at ¶ 2. While Ms. Mangio does not dispute that her signature appears on the return of service, she asserts in her Affidavit that she does not recall signing the document or receiving the summons or complaint in this litigation. Id. at ¶¶ 5 and 6. Defendant did not answer Plaintiffs' Complaint in a timely fashion and on July 23, 2004, Plaintiffs moved for and were granted default. Plaintiffs' Application for Entry of Default contained a certification that a copy was mailed to Defendant's corporate office on July 20, 2004. Defendant denies any actual notice of the existence of this litigation prior to its receipt of Plaintiffs' Motion for Entry of Judgment by Default at its Boston office on February 25, 2005. Aff. of Filippi at ¶¶ 4-6.

Plaintiffs initially moved for the entry of default judgment in the amount of \$63,148.18 representing unpaid contributions, interest, penalties, costs and attorneys' fees. On April 5, 2005, Plaintiffs filed an amended motion seeking judgment in the increased amount of \$116,173.83 apparently due to some recently discovered mathematical errors.

Standard

Rule 55(c) of the Federal Rules of Civil Procedure provides that an entry of default may be set aside for "good cause shown." The First Circuit Court of Appeals has noted that the "good cause" analysis lies within the "sound discretion" of the district court and is a "mutable standard, varying from situation to situation." Coon v. Grenier, 867 F.2d 73, 75-76 (1st Cir. 1989) (citations omitted). The First Circuit has declined to set forth a rigid standard for determining "good cause," instead encouraging a consideration of the facts of each case, however, the Court has indicated that at least three factors serve a useful purpose in any consideration of whether good cause has been demonstrated: (1) the willfulness of the default, (2) the prejudice to the non-moving party in vacating

default and (3) whether a meritorious defense is presented. See Coon, 867 F.2d at 73; citing United States v. One Parcel of Real Estate, 763 F.2d 181,183 (5th Cir. 1985). The burden of demonstrating “good cause” to vacate the entry of default falls upon the moving party, in this case, Defendant. See KPS & Assocs., Inc. V. Designs by FMC, Inc., 318 F.3d 1, 14 (1st Cir. 2003). However, “because defaults are generally disfavored and are reserved for rare occasions, when doubt exists as to whether a default should be granted or vacated, the doubt should be resolved in favor of the defaulting party.” Enron Oil Corp. v. Diakuhara, 10 F.3d 90, 96 (2nd Cir. 1993); see also KPS & Assocs., 318 F.3d at 13.

A. Willfulness

The first factor considered by the Court is whether Defendant’s behavior was willful. This factor considers the nature of the underlying reasons that default was entered against the party. If the party acted deliberately and purposefully in violation of the Federal Rules of Civil Procedure, this weighs in favor of default. If, on the other hand, default is entered against a defendant who was unaware of the pendency of a suit, or had not been served, then the defendant’s behavior is not willful, and this factor weighs in favor of vacating default. See Coon, 867 F.2d at 76-77 (defendant did not act willfully in failing to answer where he was unaware of pendency of lawsuit until after default was entered). Here, while it appears likely that Defendant received documents at its Boston office evidencing the existence of this litigation in both May and July 2004, it claims a lack of “corporate” knowledge until February 2005 and asserts that it immediately requested legal representation upon receiving such notice. Giving Defendant the benefit of the doubt, see Enron Oil Corp., 10 F.3d at 96, and in view of Defendant’s prompt filing of its opposition to Plaintiffs’ Motion

for Default Judgment, this Court cannot conclude that Defendant knowingly and willfully failed to respond to Plaintiffs' Complaint.

B. Prejudice

Although the passage of time, by itself, is insufficient to support a finding that an adversary would be prejudiced by the removal of default, see Coon, 867 F.2d at 77, "loss of evidence, increased difficulties in discovery, or greater opportunities for fraud and collusion," Johnson v. Dayton Elec. Mfg. Co., 140 F.3d 781, 785 (8th Cir. 1998), will support a finding that the non-movant would be prejudiced by the vacation of default. In the present case, the Court finds that the removal of default would not cause prejudice to Plaintiffs. The only relief sought by Plaintiffs is monetary. Thus, the interest accrued and the monetary damages potentially recoverable would act to "make them whole," despite any delay caused by Defendant's default.

C. Meritorious Defense

In order to present a "meritorious defense" Defendant need not "demonstrate a likelihood of success on the merits," instead, it must merely "plausibly suggest the existence of facts which, if proven at trial, would constitute a cognizable defense." Coon, 867 F.2d at 77 (citations omitted.) The Coon Court described this requirement as a "squatty hurdle."

Defendant offers two arguments in support of its "meritorious defense" to this action: first, that the Court lacks personal jurisdiction over Defendant because of Plaintiffs' failure to effectuate proper service of process; and second, that Defendant made the required benefit payments to the Plaintiff Funds during the time period in question. As to service of process, Defendant claims that service of process on Ms. Mangio, its Executive Assistant, is not effective under Fed. R. Civ. P.

4(e)(1) or 4(h)(1) because Ms. Mangio “is not and has never been an officer or a managing agent of [Defendant], nor is she an individual authorized by appointment or by law to accept service on behalf of the Defendant.” Plaintiffs counter that service was proper under Rule 4(e)(3), R.I. Superior Court Rules of Civil Procedure, which is incorporated as a proper method of service under Fed. R. Civ. P. 4(e)(1). Neither Plaintiffs nor Defendant cited any legal precedent in support of their interpretation of the applicable service of process requirements. As to the payment dispute, Plaintiffs concede that some contributions were made by Defendant during the period in dispute. However, Plaintiffs argue that such payments were insufficient because during that time, Defendant performed certain work within the “jurisdiction” of the Carpenters’ Union but failed to utilize Carpenters’ Union Members for such work.

Without offering an opinion as to the ultimate disposition of the defenses asserted by Defendant, this Court finds that Defendant has, at a minimum, produced “specific facts suggesting the existence of a meritorious defense” which are sufficient to meet its “squatty hurdle” under the third prong of the Rule 55(c) analysis. See Viera Aviles v. Suiza Dairy Corp., 206 F.R.D. 338, 341 (D.P.R. 2002); see also Marcantonio v. Primorsk Shipping Corp., 206 F. Supp. 2d 54, 60 (D. Mass. 2002) (colorable claim of improper service constitutes good cause to vacate a default).

Conclusion

As directed by the First Circuit, in close cases such as this, “doubts should be resolved in favor of adjudicating contested claims on the merits.” Coon, 867 F.2d at 79. Thus, for this reason and the reasons discussed above, I recommend that the District Court GRANT Defendant’s Cross-

Motion to Set Aside the Entry of Default (Document No. 9) and DENY AS MOOT Plaintiffs'

Motion and Amended Motion for Entry of Judgment by Default (Document Nos. 6 and 18).

LINCOLN D. ALMOND
United States Magistrate Judge
April 7, 2005