

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
CHARLOTTESVILLE DIVISION

DIRECTV, INC.,)	CIVIL ACTION NO. 3:03CV00049
)	
Plaintiff,)	
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
CHARLES AIKEN,)	
)	
Defendant.)	JUDGE JAMES H. MICHAEL, JR.

Before the court is the defendant's February 24, 2004 motion, accompanied by a letter to the court in support thereof, to set aside entry of judgment by default against the defendant, Charles Aiken, and the plaintiff's response to this motion, filed March 8, 2004. Having thoroughly considered the Parties arguments and all relevant law,¹ and for the reasons stated herein, the court will grant the defendant's motion and will accept the defendant's answer as timely filed.

I. Background

On May 23, 2003, the plaintiff filed this action for damages and injunctive relief for violations of the Cable Communications Policy Act of 1984, 47 U.S.C. § 521 (2000), the Electronic Communications Policy Act of 1986, 18 U.S.C. § 2510, and state common law. The defendant was served with the plaintiff's complaint on June 5, 2003. The defendant did not

¹ The court dispenses with oral argument because the facts and legal contentions are adequately presented in the materials before the court, and argument would not aid in the decisional process. The court notes that neither the plaintiff nor the defendant have requested a hearing in this matter.

plead or otherwise defend this action. Accordingly, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and upon motion by the plaintiff, the Clerk of the Court entered default as to the defendant on December 19, 2003. The defendant did not appear to contest the clerk's entry of default. By order dated January 22, 2004, this court entered judgment by default against the defendant in the amount of ten thousand dollars (\$10,000.00) plus attorney's fees in the amount of one thousand six hundred thirty-four dollars and 89 cents (\$1,634.89).

The defendant now asks this court to set aside the entry of default judgment, claiming that his failure to appear is the result of excusable neglect. The defendant denies the allegations of the complaint and indicates that although he has used DirecTV services, he has always paid for the programming as required. Upon learning of this court's entry of default judgment in February 2004, the defendant claims that he then sought the assistance of an attorney. This motion followed. The plaintiff opposes the motion and, in the alternative, requests that this court award compensation for attorney's fees and costs incurred because of the defendant's delay in responding to the complaint.

II. Discussion

Federal Rule of Civil Procedure 55(c) provides: "For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." FED. R. CIV. P. 55(c). A party seeking relief under Rule 60(b) must make a preliminary showing that the motion is timely, that the party has a meritorious defense to the action, and that the opposing party would not be unfairly prejudiced by having the judgment set aside. *Park Corp. v. Lexington Ins. Co.*, 812 F.2d 894, 896 (4th

Cir. 1987). If the moving party makes such a showing, he must then satisfy one of the grounds for relief specified in Rule 60(b). *Id.* Among the grounds for relief specified by Rule 60 (b) are the following: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment has been vacated; or (6) any other reason justifying relief from the operation of the judgment. FED. R. CIV. P. 60(b).

The question of whether a default judgment should be set aside is a matter committed to the trial court's sound discretion. *See McLawhorn v. John W. Daniel Co., Inc.*, 924 F.2d 535, 538 (4th Cir. 1991). This discretion is not limitless, but rather must be exercised within the bounds of accepted legal principles. *Bank United v. Hamlett*, 286 B.R. 839, 842 (W.D. Va. 2002). Accordingly, in determining whether to grant relief from judgment, courts are directed to construe Rules 55(c) and 60(b) liberally "in order to provide relief from the onerous consequences of defaults and default judgments. . . . Any doubts about whether relief should be granted should be resolved in favor of setting aside the default so that the case may be heard on the merits." *Tolson v. Hodge*, 411 F.2d 123, 130 (4th Cir. 1969) (internal citations omitted).

A. Promptness

A motion to set aside a default judgment pursuant to Rule 60(b) must be made within a reasonable time, and in the case of motions that rely on subsections (1) to(3), not more than one year after judgment has been entered. FED. R. CIV. P. 60(b). In determining timeliness of

a defendant's motion to set aside default judgment, a court may consider not only the length of time between the entry of judgment and the defendant's response, but also may consider the delay between the time the defendant first learns of the judgment and his response thereto. *See Park*, 812 F.2d at 896. The promptness of a defendant's response to the entry of default or to a default judgment is necessarily fact-dependent. *United States v. Moradi*, 673 F.2d 725, 728 (4th Cir. 1982). For example, given the proper set of circumstances, a delay of as much as ten months can be reasonable. *See Lolatchy v. Arthur Murray, Inc.*, 816 F.2d 951, 954 (4th Cir. 1987). More commonly, courts have found a delay of a few days or weeks to be acceptable. *Augusta Fiberglass Coatings, Inc. v. Fodor Contracting Corp.*, 843 F.2d 808, 812 (4th Cir. 1988) (two weeks); *Park*, 812 F.2d at 896 (fifteen days); *Bank United*, 286 B.R. at 843 (nineteen days); *Rasmussen v. Am. Nat'l Red Cross*, 155 F.R.D. 549 (S.D. W.Va. 1994) (three days).

In this case, the defendant filed his motion to set aside the default within one month of the court's entry of judgment by default and within 12 days of the time the defendant learned of the court's judgment. In the court's view, the relatively short period of delay leaves no question that the defendant's response within a few weeks was reasonably prompt.

B. Meritorious Defense

In the context of a defendant's motion to set aside the entry of default or default judgment, a meritorious defense will be established if the defendant proffers evidence that, "if believed, would permit the court to find for the prevailing party." *Augusta Fiberglass*, 843 F.2d at 812. While the bare allegation of a meritorious defense is insufficient, the defendant's burden is minimal. *Consol. Masonry & Fireproofing, Inc. v. Wagman Constr. Corp.*, 383

F.2d 249, 251 (4th Cir. 1967). Thus, even a “tenuous” defense may suffice so long as a court can discern the possibility that a defendant may vindicate his claim. *Moradi*, 673 F.2d at 728; *Rasmussen*, 155 F.R.D. at 552.

In this matter, the defendant contests the core factual allegations made by the plaintiff, arguing that he never used the pirating devices in question. The plaintiff argues that this contention is insufficient to establish the possibility of a meritorious defense because it amounts to a mere conclusory assertion. The law does not, however, require that the defendant produce enough evidence to vindicate his claim in actuality. Rather, the defendant need only proffer enough evidence to demonstrate the *possibility* that the defendant might prevail in his defense. In this case, the defendant’s position may be enough to entitle him to judgment should the plaintiff fail to produce sufficient evidence to show that the defendant did in fact use the illegal devices to pirate its signals.² Accordingly, the court finds that the defendant raises a sufficiently meritorious defense to support his request that the judgment by default be set aside.

C. Prejudice to the Plaintiff

As discussed above, an additional preliminary factor to be considered in assessing the defendant’s motion for relief from default judgment is the degree of prejudice to the plaintiff. *Park*, 812 F.2d at 896. The prejudice contemplated by the rule “is not the ordinary loss of advantage that would result anytime a party loses the advantage of a judgment”; rather, there must be “something more.” *Bank United*, 286 B.R. at 843. For example, prejudice may result

² The defendant has provided the court with a copy of at least one district court decision in which the defendant prevailed on summary judgment because the plaintiff, DirecTV, was unable to show that the defendant pirated its signals. (*See* Def’s Mot., Att. 2.)

when delay is such that it causes “loss of evidence, create[s] difficulty of discovery, or provide[s] greater opportunity for fraud and collusion.” *Davis v. Musler*, 713 F.2d 907, 916 (2d Cir. 1983).

No such considerations appear to the court to be present in this case—no pretrial hearings have been held, no discovery has been accomplished, and no other motions have been filed. Nor has the plaintiff demonstrated any other manner in which it would be prejudiced by the setting aside of the default judgment. Although the plaintiff suggests that it has incurred some attorney’s fees and costs due to the delay, any such delay in proceeding with the litigation in this matter is slight and insubstantial. Furthermore, should the plaintiff ultimately prevail, the plaintiff will be entitled to recovery for attorney’s fees at that time. *See* 47 U.S.C. § 553(c)(2)(C). Accordingly, the court concludes that the plaintiff would not be prejudiced by an order setting aside the entry of default judgment in this case.

D. Excusable Neglect

Having sufficiently supported his claim for relief pursuant to the requirements of Rule 55(c), the defendant must also demonstrate the existence of one of the grounds for relief from judgment specified in Rule 60(b). *Augusta Fiberglass*, 843 F.2d at 812; *Park*, 812 F.2d at 896. One such basis for relief, upon which the defendant relies, is the existence of “mistake, inadvertence, surprise, or excusable neglect.” FED. R. CIV. P. 60(b)(1). To rely on this provision, a party seeking relief must show “not only that he has a meritorious defense, but also that he had an acceptable excuse for lapsing into default.” *Park*, 81F.2d at 896 (quoting *Cent. Operating Co. v. Utility Workers of America*, 491 F.2d 245, 252 (4th Cir. 1974)). The determination of the existence of excusable neglect is left to the sound discretion of the

district court based on its appraisal of the particular facts of the case. *Universal Film Exch., Inc. v. Lust*, 479 F.2d 573, 576 (4th Cir. 1973). In general, when a defendant possesses a meritorious defense, “doubt, if any, should be resolved in favor of granting the motion to set aside the judgment in order to permit the case to be resolved on the merits.” *Id.*

Here, the defendant indicates that he did not fully understand the nature of the legal action against him and that this misunderstanding may have been enhanced by an awkward attempt at settlement.³ Furthermore, the defendant informs the court that shortly after being served with process, personal circumstances led him to move from Virginia to Florida. Following his move, the defendant states that he heard nothing further with regard to this civil action and, as a layperson, assumed the matter had been dropped. Thus, he failed to pursue advice of counsel until he received this court’s order imposing default judgment.⁴

Based on the information provided by the defendant, and with due regard for the preference for resolution of claims on their merits, the court views the defendant’s delay in answering the complaint and responding to the entry of default and judgment by default as excusable neglect. The defendant has thus met his burden under Rule 60(b) and will be granted relief from default judgment.

III. Conclusion

³ The defendant indicates that upon being served with process he attempted to contact counsel for the plaintiff and was directed to another law firm. This latter law firm apparently extended a settlement offer, but the defendant, not familiar with the process, indicates that he believed the whole situation was some sort of “scam” and so did not pursue the matter further.

⁴ Although there is some difference between the parties as to what exactly occurred when the defendant attempted to contact the plaintiff’s attorney, the court grants, as it must, the benefit of the doubt to the defendant. *Universal Film Exch.*, 479 F.2d at 576.

For the foregoing reasons, the court concludes that the defendant has satisfied the requirements of Rule 55(c) and 60(b)(1) and is entitled to have the entry of judgment by default set aside to permit adjudication of this matter on the merits. Accordingly, the defendant's motion to set aside entry of judgment by default will be granted. An appropriate order shall this day enter.

The Clerk of the Court is hereby directed to send a certified copy of this memorandum opinion to all counsel of record.

ENTERED: _____
Senior United States District Judge

Date

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DIRECTV, INC.,)	CIVIL ACTION NO. 3:03CV00049
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v.)	<u>ORDER</u>
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Defendant.)	JUDGE JAMES H. MICHAEL, JR.

Before the court is the defendant's February 24, 2004 motion, accompanied by a letter to the court in support thereof, to set aside entry of judgment by default against the defendant, Charles Aiken, and the plaintiff's response to this motion, filed March 8, 2004. For the reasons set forth in the accompanying memorandum opinion it is this day

ADJUDGED, ORDERED AND DECREED

as follows:

1. The defendant's "Motion to Set Aside Entry of Default Judgment," filed February 24, 2004, shall be, and hereby is, GRANTED;
2. The court's January 22, 2004 Order entering judgment by default against the defendant, Charles Aiken, shall be, and hereby is, VACATED;
3. The defendant's answer, filed February 24, 2004, shall be considered timely filed;
4. The plaintiff's request for attorney's fees and costs due to the defendant's delay in response, filed March 8, 2004, shall be, and hereby is DENIED.

The Clerk of the Court is hereby directed to send a certified copy of this Order to all counsel of record.

ENTERED: _____
Senior United States District Judge

Date