UNITED STATES DISTRICT COURT

DISTRICT OF MAINE

MELISSA BEAN, Plaintiff v. SANFORD HEALTH CARE FACILITY INC., Defendant	Civil No. 96-200-P-C

GENE CARTER, District Judge

ORDER GRANTING DEFENDANT'S
MOTION TO SET ASIDE ENTRY OF DEFAULT

Defendant Sanford Health Care Facility Inc. requests that this Court set aside the default which was entered against it in this matter. Plaintiff Melissa Bean opposes Sanford's motion. For the reasons that follow, the Court will grant Sanford's motion.

In June 1996, counsel for Ms. Bean mailed Sanford a notice of lawsuit and request for waiver of service summons. On July 16, 1996, Deborah Graffam, Sanford's Business Manager, signed the waiver of service summons, and on July 23, 1996, returned it to Plaintiff's counsel. Ms. Graffam's supervisor and the owner of Sanford, Doyle Sowerby, was on a trip to Alaska at the time the waiver was received. Ms. Graffam did not show Mr. Sowerby the notice but, upon his return, discussed with him her understanding of the notice. Ms. Graffam did not understand that the time to file a response to Plaintiff's allegations was triggered by

receipt of the waiver of service summons.[1]

On September 27, 1996, Sanford received another letter from Plaintiff's counsel referring to a damages hearing. Ms. Graffam called the Court for an explanation of the meaning of the letter from Plaintiff's counsel. The Court Clerk advised that a default had been entered against it, explained the meaning of an entry of default, and recommended that Sanford secure legal counsel. Sanford contacted a law firm on Friday October 4, and on October 8, 1996, engaged counsel to represent Sanford. The instant motion to set aside the entry of default was filed the following day.

The decision of whether to set aside an entry of default lies within the sound discretion of the Court. See e.g., United States v. One Urban Lot, 865 F.2d 427, 429 (1st Cir. 1989). Rule 55 provides that the Court may set aside an entry of default if "good cause" is shown. Fed.R.Civ.P. 55(c). Recognizing that each case presents a unique circumstance, the First Circuit has provided three general components of "good cause" which have universal application: (1) whether the default was willful; (2) whether any prejudice resulted from the default; and (3) whether

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[1]Ms. Graffam's understanding at the time was that she was waiving the right to be served with the complaint in person and the expenses associated therewith. Deborah Graffam Aff. ¶ 7. Ms. Graffam erroneously believed that Plaintiff would "file the complaint in court and that Sanford Health Care Facility would receive specific notice from the Court that an action had been started and that we would receive direction from the Court about what to do next, such as send a response or go to a hearing. I did not understand that the time to file a response had begun when I signed and sent back those forms." Graffam Aff. ¶ 8.

there is a meritorious defense to each of the claims alleged in the complaint. See Coon v. Grenier, 867 F.2d 73, 76 (1st Cir. 1989).

There is no direct evidence that the default here was willful. Ms. Graffam signed the waiver of service of the complaint without understanding the effect of that waiver despite the clear statement that judgment will be entered if a response is not filed within 60 days. This action, by a Business Manager not trained in legal duties and strict time lines, amounts to negligence. The Court is not provided with the date which Mr. Sowerby returned from Alaska.[2] However, after Mr. Sowerby returned, presumably prior to the time to respond to the Complaint had expired, Ms. Graffam "discussed the forms and a copy of the complaint" with him. From this, the Court infers that Mr. Sowerby was also negligent in his supervisory capacity by not seeking out the documents and making his own assessment of the meaning of the waiver. Plaintiff's Memorandum of Law in Opposition to Defendant's Motion to Vacate Default (Docket No. 11) Ex. 7. The decision of Mr. Sowerby not to undertake an independent investigation of the paperwork which had been signed by a representative of Sanford comes very close to willfulness.[3]

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[2]The only information given on this is that the trip was "extended." Graffam Aff. ¶ 5.

[3]The Court notes that Mr. Sowerby was on notice that a lawsuit may be filed in this matter given the Notice of Right to Sue letter Sanford received from the Equal Employment Opportunity Commission. Plaintiff's Memorandum of Law in Opposition to

(continued...)

Nevertheless, the Court is unable to find any direct evidence of deliberate conduct on the part of either of Sanford's representatives.

Likewise, the Court is unable to find any prejudice to Plaintiff as a result of the default. Plaintiff does not even address this prong in her opposition to the motion. Finally, the Court finds that Sanford raises a meritorious defense in this case. The meritorious defense prong does not require that Sanford demonstrate likelihood of success on the merits. Rather, Sanford's averments "need only plausibly suggest the existence of facts which, if proven at trial, would constitute a cognizable defense." Coon, 867 F.2d at 77 (citations omitted). According to the Director of Nursing at Sanford, Plaintiff was not discriminated against as a result of her pregnancy. Ellen Johnston Aff. ¶ 20. In fact Sanford disputes that Plaintiff was ever terminated. Instead, It is alleged that Plaintiff applied for, and received, unemployment compensation on the ground that she was unable to perform the requirements of her job for medical reasons. Johnston Aff. ¶ 15.

The Court assesses these considerations, along with others, in light of the overriding policy that actions should ordinarily be resolved on their merits. Meegan v. Snow, 652 F.2d 274, 276 (1st Cir. 1981); United States v. One Parcel of Real Property, 763 F.2d 181, 183 (5th Cir. 1985). The Court is particularly

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[3](...continued)
Defendant's Motion to Vacate Default Ex. 6.

mindful of this philosophy where, as here, Plaintiff requests, among other remedies, reinstatement. The Court concludes that the weight of these factors rests with the desirability of having this case decided on the merits.

Accordingly, it is ORDERED that Defendant's Motion to Set Aside Entry of Default be, and it is hereby, GRANTED.

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GENE CARTER
District Judge

Dated at Portland, Maine this 26th day of November, 1996.