

STATE OF MAINE
CUMBERLAND, ss

BUSINESS AND CONSUMER COURT
Location: Portland
Docket No.: BCD-CV-13-33 ✓

E. CHRIS L'HOMMEDIEU and HEATHER
PERREAULT, Personal Representatives of
the ESTATE OF EDWARD
L'HOMMEDIEU, STEPHEN M. MYERS,
and KIM C. MYERS,

Plaintiffs,

v.

RAM AIRCRAFT, L.P. CESSNA
AIRCRAFT COMPANY d/b/a
MCCAULEY PROPELLER SYSTEMS,
MAINE AVIATION SALES, INC.,
AIRCRAFT MAINTENANCE OF MAINE,
INC., YANKEE AVIATION SERVICES,
INC., NEW ENGLAND PROPELLOR
SERVIC, INC., ENGINE COMPONENTS
INTERNATIONAL, INC., and CHAMPION
AEROSPACE, LLC,

Defendants

DECISION AND ORDER
(Motion to Set Aside Default/Motion for
Leave to File Late Answer)

This matter is before the Court on Defendant Champion Aerospace LLC's (Defendant Champion) Motion to Set Aside Default and Motion for Leave to File Late Answer.

The record reflects that Plaintiffs served the complaint and summons on Defendant Champion's agent, CT Corporation Systems, on May 3, 2013. When Defendant Champion did not file an answer to the complaint, on June 10, 2013, Plaintiffs requested and obtained a default against Defendant Champion. The clerk also entered default judgment against Defendant Champion. The final default was entered on June 17, 2013. On June 24, 2013, Defendant

Champion filed a late answer, a motion for leave to file late answer, and a motion to set aside the default and default judgment.

Discussion

M.R. Civ. P. 55(c) provides that “[f]or 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).” “To meet the ‘good cause’ standard of Rule 55(c) a party must show ‘both a good excuse for his untimeliness in pleading ... and the existence of a meritorious defense’”. *Hammond v. Thomas Realty Associates*, 617 A.2d 562, 563-64 (Me. 1992) (citing, *Design Build of Maine v. Paul*, 601 A.2d 1089, 1091 (Me. 1992)). In addition, the Court should be mindful of the law’s preference for resolving cases on the merits, rather than on a procedural basis. *See, Thomas v. Thompson*, 653 A.2d 417, 420 (Me. 1995); 3 Harvey, *Maine Civil Practice* § 55.7 at 207 (2012-2013).

Preliminarily, given that the clerk is only authorized to enter a default judgment “for a sum certain or for a sum which can by computation be made certain,” and given that Plaintiffs’ claim cannot is not one for a sum certain, the clerk was not authorized to enter a default judgment. M.R. Civ. P. 55(b)(1). Accordingly, pursuant to M.R. Civ. P. 60(b), the Court will grant Defendant Champion’s request for relief from the default judgment and will vacate the judgment.

As mentioned above, in its assessment of Defendant Champion’s request to set aside the default, the Court must determine whether Defendant Champion has demonstrated a good excuse for its failure to file an answer to the complaint within 20 days of the service of the complaint and summons, and a meritorious defense to Plaintiffs’ claim. Based upon a review of Plaintiffs’ complaint, and the affidavit of James Liddle, Defendant Champion’s president, the Court

concludes that the cause of the airplane crash that is the subject of this case, including Defendant Champion's potential responsibility for the crash, is very much in dispute. The Court is convinced, therefore, that Defendant Champion has a meritorious defense to Plaintiff's claim.

The issue thus becomes whether Defendant Champion has demonstrated a good excuse for its failure to file timely its response to Plaintiffs' complaint. First, the Court notes that after learning of the entry of default through a mailing from the Cumberland County Court, Defendant Champion, through its counsel, promptly filed an answer and the pleadings by which Defendant Champion seeks to remove the default. Defendant Champion's prompt actions suggest that Defendant Champion's failure to file timely an answer was not the product of its disregard for the judicial process.

In addition, the Court is convinced that Defendant Champion's failure to file the answer resulted from a breakdown in the process established by TransDigm, Defendant Champion's parent company, to assure that complaints are managed properly. The breakdown apparently resulted from a combination of factors in TransDigm's office during the time that the complaint was received, which factors include the recent relocation of the office of one of the individuals responsible for handling the complaint, and several other pressing business matters. The fact that Defendant Champion, through its parent company, has an established procedure for handling complaints is further evidence that Defendant Champion did not intend to disregard or disrespect the process. In short, the Court is persuaded that Defendant Champion's failure to file was likely caused by inadvertence rather than an intentional disregard for the court process. Under these circumstances, which include Defendant Champion's prompt efforts upon learning of the default to answer the complaint and to seek removal of the default, the Court concludes that Defendant Champion has demonstrated a good excuse for the failure to file an answer to the complaint. The

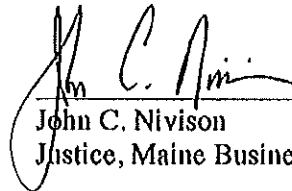
Court believes that this conclusion is consistent with “the policy of the law to favor, wherever possible, a hearing on the merits ...” *Westcott v. Allstate*, 397 A.2d 156, 163 (Me. 1979).¹

Conclusion

Based on the foregoing analysis, the Court grants Defendant Champion’s Motion to Set Aside Default, and grants Defendant Champion’s Motion for Leave to File Late Answer. Accordingly, the Court vacates the judgment against Defendant Champion, sets aside the default entered against Defendant Champion, and allows the filing of the late answer.

Pursuant to M.R. Civ. P. 79(a), the Clerk shall incorporate this Decision and Order into the docket by reference.

Date: 9/20/13



John C. Nivison
Justice, Maine Business & Consumer Court

¹ Although perhaps not entirely relevant to the Court’s “good cause” analysis, the fact that the case is in its infant stages and involves multiple Defendants further convinces the Court that removal of the default is appropriate.