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United States District Court, D. New Jersey.

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, et al., Plaintiffs,
v.
AMERICAN THERMOPLASTICS CORP., et al., Defendants.

Civ. No. 98-4781 (WHW)
|
Signed 12/02/2011

Attorneys and Law Firms

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Township of Clinton, pro se.

OPINION & ORDER

William H. Walls, United States Senior District Judge

***1** Third-party plaintiffs Compaction Systems Corporation and Compaction Systems Corporation of Connecticut, Inc. (collectively "Compaction") seek contribution for liability associated with the clean-up of hazardous waste at the Combe Fill South Superfund Site, a former landfill site in Morris County, New Jersey. Defaulting third-party defendants Carter Day Industries, Inc. ("CDI"), Combustion Equipment Associates, Inc. ("CEA"), and Combe Fill Corporation move pursuant to Federal Rule of Civil Procedure 55(c) to set aside the entry of default, which Compaction opposes. The Court finds that good cause exists to exercise its discretion to set aside the entry of default and to afford these defaulting third-party defendants opportunity to respond to the contribution claims against them.

FACTUAL AND PROCEDURAL BACKGROUND

The defaulting third-party defendants CDI, CEA, and Combe Fill Corporation's motion to set aside the entry of default opens the most recent chapter of longstanding litigation related to the Combe Fill South Superfund Site. While the procedural history is extensive, the Court recites here only the background facts relevant to the present motion. The current consolidated case was initially brought by the governmental plaintiffs against Compaction and other defendants who allegedly owned or operated the landfill or who allegedly generated or transported the hazardous substances disposed of at the site. The United States on behalf of the United States Environmental Protection Agency ("EPA") first filed its complaint in September 1998 seeking to recover costs and damages under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601, et seq. ("CERCLA"). Certification of Craig J. Huber, Esq. in Supp. of Mot. to Set Aside Entry of Default, dated May 26, 2011 ("Hubert Cert.), Ex. 1. The New Jersey Department of Environmental Protection ("NJDEP") and the Administrator of the New Jersey Spill Compensation Fund filed their initial complaint in October 1998 seeking costs and damages under CERCLA and state environmental laws. Hubert Cert., Ex. 2.

On February 14, 2000, Compaction along with other defendants filed the Amended Third-Party Complaint asserting contribution claims against CEA, CDI, Combe Fill Corporation, and additional third-party defendants. Huber Cert., Ex. 24. CEA, CDI, and Combe Fill Corporation filed no response to the Amended Third-Party Complaint. Compaction requested an entry of default against these parties on October 25, 2007. Mot. for Entry of Default, ECF No. 1002. On December 2, 2008, this Court directed the Clerk of the Court to enter default against CEA, CDI, and Combe Fill Corporation. Letter Order, ECF No. 1073.

On June 16, 2009, this Court approved a consent decree settling the claims asserted by the government plaintiffs EPA, NJDEP, and the Administrator of the New Jersey Spill Compensation Fund against Compaction and the other settling defendants. Partial Consent Decree, ECF No. 1124. Under the terms of this consent decree, Compaction reserved the right to seek contribution from CEA, CDI, and Combe Fill Corporation. Judgment on Consent Against Compaction Systems Corporation of Connecticut, Inc. and Compaction Systems Corporation, ECF No. 1128. On July 24, 2009, CEA, CDI, and Combe Fill Corporation first filed a motion to set aside the entry of default and for leave to answer or otherwise respond to the Amended Third-Party Complaint. Mot. to Set Aside Default, ECF No. 1132. Following oral argument on January 13, 2010, this Court denied the motion to set aside the entry of default without prejudice to renew and stayed all proceedings on these contribution claims pending arbitration in the related Century Indemnity action. Order, dated Jan. 14, 2011, ECF No. 1143; Century Indem. Co. v. Compaction Sys. Corp. of New Jersey, Civ. No. 09-1053 (D.N.J. Jan. 13, 2010) (order referring claims to arbitration and staying related action).

***2** On May 26, 2011, CEA, CDI, and Combe Fill Corporation filed a renewed motion to set aside the entry of default. Mot. to Set Aside Default, ECF No. 1152. Compaction again opposes the motion and filed opposition papers on June 5, 2011. Opp. to Mot. to Set Aside Default, ECF No. 1153. On July 26, 2011, this Court lifted the stay in these proceedings at the same time that it confirmed the arbitration award in the related Century Indemnity action. Order, ECF No. 1157.

STANDARD OF REVIEW

Federal Rule of Civil Procedure 55 governs both the clerk's entry of default and the subsequent issuance of a default judgment. The district court's authority over the default judgment process has been described as "an inherent power" based on "the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." Hritz v. Woma Corp., 732 F.2d 1178, 1180 (3d Cir. 1984) (citations omitted). Because a default judgment prevents a plaintiff's claims from being decided on the merits, the Third Circuit has explained that "this court does not favor entry of defaults or default judgments." United States v. $55,518.05 in U.S. Currency, 728 F.2d 192, 194–95 (3d Cir. 1984). Accordingly, cases should be "disposed of on the merits whenever practicable." Hritz, at 1181 (citations omitted); see also $55,518.05 in U.S. Currency, 728 F.2d at 194–95.

The Federal Rules of Civil Procedure provide that a district court "may set aside an entry of default for good cause." Fed. R. Civ. P. 55(c). The Third Circuit has explained that the court in exercising this discretion must consider (1) "whether the plaintiff will be prejudiced," (2) "whether the defendant has a meritorious defense," and (3) "whether the default was the result of the defendant's culpable conduct." Budget Blinds, Inc. v. White, 536 F.3d 244, 256–57 (3d Cir.2008) (quoting $55,518.05 in U.S. Currency, 728 F.2d at 195). Defaults are generally disfavored and any doubts concerning whether default should be vacated "should be resolved in favor of setting aside the default and reaching a decision on the merits." Gross v. Stereo Component Sys., Inc., 700 F.2d 120, 122 (3d Cir. 1983).

DISCUSSION

Good cause exists here for the Court to exercise its discretion to set aside the clerk's entry of default against CEA, CDI, and Combe Fill Corporation. First, the defaulting third-party defendants have identified several arguments that they could raise as complete defenses to the contribution claims and these defenses meet the low threshold burden of facial merit required here. Although more than a decade has elapsed since the contribution claims against CEA, CDI, and Combe Fill Corporation were first asserted and three years have passed since the entry of default against these parties, Compaction has not demonstrated that it has been significantly prejudiced by any changing circumstances during this time that would hinder its ability to adequately pursue the case on the merits. Finally, CEA, CDI, and Combe Fill Corporation's default does not rise to the level of culpable conduct because there is no evidence that their failure to respond to the contribution claims against them was based on bad faith or a willful and deliberate trial strategy.

I. Meritorious Defense

When considering a motion to vacate an entry of default, the Court must consider whether the "allegations of defendant's answer, if established on trial, would constitute a complete defense to the action." $55,518.05 in U.S. Currency, 728 F.2d at 195 (quoting Tozer v. Charles A. Krause Milling Co., 189 F.2d 242, 244 (3d Cir. 1951)). The defaulting party need not prove that it will prevail at trial, but must raise a defense which is meritorious on its face. Id. See Wingate Inns Int'l, Inc. v. P.G.S., LLC, Civ. No. 09-6198, 2011 WL 256327, at *3 (D.N.J. Jan. 26, 2011). To be meritorious, this defense must consist of more than "simple denials or conclusionary statements." $55,518.05 in U.S. Currency, 728 F.2d at 195.

***3** Defaulting third-party defendants CDI, CEA, and Combe Fill Corporation insist that they can raise several specific meritorious defenses to the contribution claims. These alleged defenses include: (1) that CEA and CDI had no ownership interest or operational involvement in the landfill; (2) that the factors governing allocation of liability would limit the amount of liability that should be imposed on Combe Fill Corporation and weigh against imposing any liability on CEA or CDI; (3) that CERCLA precludes contribution claims against CEA, CDI, and Combe Fill Corporation as settling parties; (4) that bankruptcy proceedings by CEA and Combe Fill Corporation discharged all claims against CEA, CDI, and Combe Fill Corporation; and (5) that Compaction's claims are barred by the doctrine of res judicata based on the earlier bankruptcy decisions. Mot. to Set Aside Default 21–38. See Proposed Answer to Amended Third-Party Complaint, Huber Cert., Ex. 42. Taken together, the defenses proffered by CDI, CEA, and Combe Fill Corporation would constitute complete defenses for the claims against all three defaulting parties.

While Compaction contests the legal and factual merit of these defenses, Opp. to Mot. to Set Aside Default 22–24, this is not the appropriate stage for the Court to engage in any significant substantive analysis. Without considering the merits of any of these defenses individually, the Court notes only that the defaulting third-party defendants have raised complete affirmative defenses that are not "facially unmeritorious." See Gross, 700 F.2d at 123; Emcasco Ins. Co. v. Sambrick, 834 F.2d 71, 74 (3d Cir. 1987). All parties will have the opportunity to more fully develop their arguments at a later date, if they choose to do so, and the Court will consider the merits of these defenses at that time.

II. Prejudice to the Non-Defaulting Parties

The second factor that a court must consider is whether the non-defaulting party would be prejudiced if the court were to set aside the entry of default. $55,518.05 in U.S. Currency, 728 F.2d at 195. To show prejudice, the plaintiff must demonstrate that its "ability to pursue the claim has been hindered" since the entry of the default. Feliciano v. Reliant Tooling Co., Ltd., 691 F.2d 653, 657 (3d Cir. 1982). As example, a non-defaulting party can be prejudiced in its ability to pursue a claim by the "loss of available evidence, increased potential for fraud or collusion, or substantial reliance" on the default. Id.

Compaction argues that the prejudice is "palpable" because Compaction (1) "has waited over a decade" to pursue the contribution claims against CEA, CDI, and Combe Fill Corporation, (2) "participated in a lengthy and costly ADR process at great expense" while CEA, CDI, and Combe Fill Corporation "thumbed [their] nose at the ADR process," and (3) settled the claims against it and entered into a consent decree "on the understanding that it could pursue its claims in contribution" against CEA, CDI, and Combe Fill Corporation. Opp. to Mot. to Set Aside Default 10. The defaulting third-party defendants respond that Compaction can still pursue its claims against them and "remains in the exact same position with regard to proving its claims." Mot. to Set Aside Default 19–20; Reply to Mot. to Set Aside Default 10–11. The defaulting third-party defendants insist that "none of the relevant evidence has been altered or otherwise been made unavailable" since the entry of default in December 2008. Mot. to Set Aside Default 20

Although the resolution of Compaction's contribution claims against CEA, CDI, and Combe Fill Corporation have been delayed, this delay alone does not rise to the level of prejudice. The Third Circuit has emphasized that "delay in realizing satisfaction on a claim rarely serves to establish the degree of prejudice sufficient" to prevent setting aside an entry of default or default judgment. See Emcasco Ins. Co., 834 F.2d at 74 (quoting Feliciano, 691 F.2d at 656–57). Compaction has not raised any specific basis for arguing that its ability to pursue the contribution claim has been hindered by a loss of evidence, foreclosure of discovery, or any other obstacle. Compaction has therefore failed to demonstrate prejudice sufficient to warrant the drastic remedy of denying CEA, CDI, and Combe Fill Corporation's request to set aside the entry of default.

III. Culpable Conduct by Defaulting Parties

***4** Finally, the court must consider whether the entry of default resulted from "culpable conduct" by the defaulting third-party defendants. $55,518.05 in U.S. Currency, 728 F.2d at 195. Culpable conduct has been defined as "conduct that is taken willfully or in bad faith." Hill v. Williamsport Police Dept., 69 F. App'x 49, 52 (3d Cir. 2003) (quotations omitted). Compaction argues that CDI, CEA, and Combe Fill Corporation's decision not to respond for more than a decade was a deliberate trial strategy based on a bad faith attempt to avoid the costly ADR process. Opp. to Mot. to Set Aside Default 15–16. Compaction contends that CDI, CEA, and Combe Fill Corporation had actual notice of the contribution claims against them and deliberately defaulted at least as early as 2000 when CDI's former attorney sent letters to Compaction's counsel outlining potential defenses. Id. at 18 (citing Decl. of Jeffrey M. Pollock, Esq. in Supp. of Mot. for Entry of Default, dated Feb. 13, 2008, ECF No. 1025, Exs. E, G, I). Compaction insists that the Court should not reward the defaulting parties' recalcitrance by allowing them to set aside the default now that their trial strategy has become too risky. Id. at 18–19.

Defaulting third-party defendants respond that the default was not willfully based on any bad faith intention or deliberate trial strategy. Mot. to Set Aside Default 18–19. Since all three parties are defunct and/or dissolved, the defaulting third-party defendants argue that each lacked actual notice of the claims against them and the capacity to respond to those claims until the insurance carriers were notified in December 2008. Id. at 19. The defaulting third-party defendants further argue that the insurance carriers then acted in good faith with "reasonable promptness" in responding to the entry of default by attending court appearances in this matter, seeking to enforce prior settlement agreements in separate actions, and retaining counsel for the defaulting third-party defendants. Id. at 17–18.

CDI, CEA, and Combe Fill Corporation's collective failure as defunct or dissolved corporations to timely respond to the Amended Third-Party Complaint does not rise to the level of culpable conduct. Even if these parties did have actual notice of the claims against them, this Court has repeatedly found that the failure to respond despite notice of the claim is not enough alone to constitute culpable conduct. Wingate Inns Int'l, 2011 WL 256327, at *4; Ford v. Consigned Debts & Collections, Inc., Civ. No. 09-3102, 2010 WL 2758182, at *2 (D.N.J. Jul. 12, 2010). Moreover, the current record does not show that the defunct and dissolved parties clearly formulated any "deliberate trial strategy" to default and circumvent the courts and the ADR process. See Zawadski de Bueno v. Bueno Castro, 822 F.2d 416, 421 (3d Cir. 1987).

The Court is cautious about imputing culpable conduct based on deliberately willful or bad faith actions where these companies may not have clear leadership or representatives to formulate such conduct. The failure of CDI's former counsel to undertake full litigation on behalf of the defunct or dissolved corporate entities alone, particularly where it may not have authority to do so, does not rise to the level of culpable conduct on the part of those entities. Moreover, the insurance carriers' apparent efforts to retain counsel for the defunct or dissolved entities in order to set aside the default in 2009 after allegedly learning of the claims when the default was entered in December 2008 may have been delayed, but this delay was not clearly the result of any willful or bad faith conduct. As the Third Circuit has emphasized, this Court must resolve all doubts in favor of setting aside default. See Gross, 700 F.2d at 122.

CONCLUSION

The Court finds good cause to exercise its discretion under Federal Rule of Civil Procedure 55(c) to set aside the entry of default against third-party defendants CDI, CEA, and Combe Fill Corporation.

Accordingly, it is, on this 2nd day of December,

ORDERED that third-party defendants CDI, CEA, and Combe Fill Corporation's motion to set aside entry of default is GRANTED; and

***5** ORDERED that third-party defendants CDI, CEA, and Combe Fill Corporation answer or otherwise respond to the Amended Third-Party Complaint no later than twenty (20) days from the date of this Opinion and Order.

All Citations

Not Reported in Fed. Supp., 2011 WL 13371210

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