

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FAYETTEVILLE DIVISION

HUGH JARRATT and JARRATT  
INDUSTRIES, LLC

PLAINTIFFS

v.

No. 5:16-CV-05302

AMAZON.COM, INC. and CT  
DISCOUNT STORE, INC.

DEFENDANTS

**ORDER**

Before the Court is Defendant Amazon.com, Inc.'s ("Amazon") motion (Doc. 28) to set aside default. No response has been filed but a response is unnecessary. The motion to set aside default will be granted.

Amazon has been engaged in settlement discussions with Plaintiffs. The Court was aware of this fact, given that the settlement discussions were the basis for Plaintiffs' motion to withdraw the motion for preliminary injunction against Amazon. (Doc. 17, ¶ 1). Separate Defendant CT Discount Store, Inc. has now entered an appearance and filed an answer. The Court has previously granted Amazon two extensions, and though the third motion to extend was essentially identical to the previous two, the appearance and answer of a separate defendant necessitates advancing this litigation. No specific good cause was set out in Amazon's third motion, and an ongoing settlement discussion involving only one defendant is not cause enough to delay this litigation further, as nothing prevents settlement discussions from occurring during the pendency of litigation. Furthermore, Amazon's delay in asking the Court for an extension until after business hours on the day of the deadline reflects a lack of diligence. These are all standard reasons for denying a motion to extend. *See, e.g., Spears v. City of Indianapolis*, 74 F.3d 153, 157–58 (7th Cir. 1996) (finding no abuse of discretion in denying an extension where previous extensions had been

granted and the need for extension was caused by an apparent lack of diligence).

Amazon's filing of the unopposed motion to extend the time to respond before the deadline to respond expired did not automatically toll or extend the response deadline. If such were the case, any party unprepared to make a timely filing could simply move for an extension to unilaterally buy itself additional time to file the document due. Instead, filing the motion within the deadline merely required Amazon to show good cause for an extension, rather than the more exacting standard of excusable neglect. *See* Fed. R. Civ. P. 6(b)(1). Because Amazon did not show good cause, the Court denied the motion. Because Amazon had not filed its responsive pleading by the deadline, procedurally, an entry of default was required.

However, there is a strong preference for adjudication on the merits, stemming from an interest in preserving the "fundamental fairness of the adjudicatory process." *Oberstar v. F.D.I.C.*, 987 F.2d 494, 504 (8th Cir. 1993). The entry of default may be set aside for good cause. Fed. R. Civ. P. 55(c). "When examining whether good cause exists, the district court should weigh whether the conduct of the defaulting party was blameworthy or culpable, whether the defaulting party has a meritorious defense, and whether the other party would be prejudiced if the default were excused." *Stephenson v. El-Batravi*, 524 F.3d 907, 912 (8th Cir. 2008) (internal quotation omitted). Plaintiffs will not be prejudiced if the default is excused, as Plaintiffs agreed to the requested extension of time to file a responsive pleading. Amazon's proposed answer (Doc. 28-1) is not a frivolous defense to the complaint. Finally, while Amazon is responsible for its own lack of diligence, its culpability in this case is not enough to overcome the Court's preference for resolution of disputes on the merits. Amazon represents that it stood ready to answer, but received a settlement proposal from Plaintiffs at the eleventh hour. The Court understands that procedural rules can present a logistical problem when parties want to request relief from a deadline, but

Counsel should be aware going forward that the Court's standard practice is not to grant extensions or stays solely for settlement purposes.

IT IS THEREFORE ORDERED that Defendant Amazon.com, Inc.'s motion to set aside the entry of default (Doc. 28) is GRANTED, and the Clerk's entry of default (Doc. 27) is SET ASIDE. Defendant Amazon.com, Inc. is directed to immediately file the proposed answer attached as an exhibit to its motion.

IT IS SO ORDERED this 14th day of April, 2017.

*P. K. Holmes, III*

P.K. HOLMES, III  
CHIEF U.S. DISTRICT JUDGE