

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

DAVID ALLEN ZIMMERN,

Case No. 19-30046

Debtor.

NANCY J. GARGULA,

Plaintiff,

v.

Adversary Case No. 19-3007

DAVID ALLEN ZIMMERN,

Defendant.

ORDER GRANTING MOTION TO VACATE, SETTING ASIDE CLERK'S ENTRY
OF DEFAULT, AND DIRECTING DEFENDANT TO FILE ANSWER

This case is before the court on the motion to vacate (doc. 18) filed by the debtor-defendant and the plaintiff-U.S. trustee's response thereto (doc. 19). For the reasons discussed below, the court grants the motion.

The plaintiff filed this action under 11 U.S.C. § 727 on June 14, 2019. She served the defendant with an alias summons on July 26, 2019. She then moved for clerk's entry of default on August 28, 2019, which was granted on September 4, 2019. She filed a motion for default judgment on September 5, 2019. The court has not ruled on that motion. The defendant then filed a motion to vacate on September 6, 2019. He refiled the motion under the appropriate filing event on September 16, 2019.

"The court may set aside an entry of default for good cause" *See* Fed. R. Civ. P. 55(c) (applicable by Fed. R. Bankr. P. 7055(c)). This standard is a mutable and liberal one, which is lower than the standard for setting aside a default judgment. *See Perez v. Wells Fargo*

N.A., 774 F.3d 1329, 1338 n.7 (11th Cir. 2014); *E.E.O.C. v Mike Smith Pontiac GMC, Inc.*, 896 F.2d 524, 528 (11th Cir. 1990). The Eleventh Circuit “expresses a strong preference that cases be heard on the merits . . . and strives to afford a litigant his or her day in court, if possible.” *See id.* at 1342 (citations, quotation marks, and brackets omitted). “Although not talismanic, factors in the analysis include whether the default was culpable or willful, whether setting it aside would prejudice the adversary, and whether the defaulting party presents a meritorious defense.” *Sherrad v. Macy’s System & Tech., Inc.*, 724 F. App’x 736, 738 (11th Cir. 2019) (citation and quotation marks omitted). “Also instructive may be ‘whether the defaulting party acted promptly to correct the default.’” *Id.* (citation omitted).

Here, there is no indication that the failure to respond rises to the level of willful conduct. The defendant filed the motion to vacate two days after the entry of default, and there is little or no prejudice to the plaintiff in setting aside the entry of default at this stage; for example, the plaintiff does not suggest that the two-day delay “caused a loss of evidence, created increased difficulties in discovery, or allowed for greater opportunities for fraud and collusion.” *See id.* at 738-39. The court agrees with the plaintiff that there is little information in the defendant’s motion about any meritorious defenses but will not deny the motion to vacate on that ground alone. *See id.* at 739 (“We note that the [lower] court properly refused to rely upon [the defendant]’s bald assertions that it had a meritorious defense. Our good cause analysis, however, does not require that each factor be satisfied.”).

Like the Eleventh Circuit, this court “generally view[s] defaults with disfavor” and has a “strong policy of determining cases on their merits.” *See, e.g., id.* at 738 (citation and quotation marks omitted). The court finds that the short period of time involved, lack of prejudice to the plaintiff, and the policy of resolving cases on the merits constitute “good cause” to set aside the

entry of default. The court thus grants the motion to vacate (doc. 18), vacates the clerk's entry of default, and orders the defendant to file an answer to the complaint within 3 days of this order.¹

Dated: September 24, 2019


HENRY A. CALLAWAY
U.S. BANKRUPTCY JUDGE

¹ The defendant attached a copy of his proposed answer to his motion but needs to file the answer into the record after this order.