

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:)	CHAPTER 7
)	
VALENCIA J. WALKER,)	CASE NO. 14-66725 – MHM
)	
Debtor.)	
)	
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MICHAEL F. HANSON.)	
)	
Plaintiff,)	ADVERSARY PROCEEDING
v.)	NO. 14-5400
)	
VALENCIA J. WALKER,)	
)	
Defendant.)	

ORDER DENYING MOTION TO STRIKE

Plaintiff filed a *Motion to Strike Defendant's Answers* January 9, 2015, seeking an order striking Defendant's answer, entry of default by the Clerk of Court, and entry of default judgment in Plaintiff's favor (Doc. No. 8) (the "Motion"). Plaintiff filed a complaint initiating this adversary proceeding December 1, 2014, and amended the complaint that same day (Doc. No. 4) (as amended, the "Complaint"). Pursuant to Rule 7012(a) of the Federal Rules of Bankruptcy Procedure, an answer was due by December 31, 2014. Defendant filed her answer and affirmative defenses to the Complaint January 7, 2015 (Doc. No. 7) (the "Answer"). Plaintiff did not request entry of default and the Clerk of Court did not enter default before Defendant filed her Answer; however, Plaintiff now argues

that the Answer should be stricken as untimely and default judgment entered in favor of Plaintiff. Defendant has not filed any additional pleadings explaining the tardiness of the Answer of a response to Plaintiff's Motion.

DISCUSSION

Rule 7012(a) of the Federal Rules of Bankruptcy Procedure requires a defendant to "serve an answer within 30 days after issuance of the summons." FED. R. BANKR. P. 7012(a). Courts have "considerable discretion" to strike or allow late-filed answers. *In re Klarchek*, 509 B.R. 175, 182 (N.D. Ill. 2014); *see also In re Francis*, 426 B.R. 398 (Bankr. S.D. Fla. 2010); *In re Main*, 111 B.R. 535, 538-539 (Bankr. W.D. Pa. 1990); *In re Cantwell*, 17 B.R. 639 (Bankr. E.D. Pa. 1982).

Courts generally will deny a motion to strike a late-filed answer that is based on purely technical grounds because to rule otherwise would "elevat[e] form over substance", *In re Francis*, 426 B.R. at 406. Furthermore, courts prefer to decide cases on their merits over granting default judgment. *In re USN Communications, Inc.*, 288 B.R. 391, 394 (Bankr. D. Del. 2003); *In re Main*, 111 B.R. at 539. When determining whether to strike an answer and grant default judgment, courts may consider several factors, including whether the defendant displayed a clear pattern of delay and intentional disregard of court orders, prejudice to the plaintiff caused by the delay in filing an answer, potentially meritorious defenses raised in the answer, and the reason given for the delay. *In re Zeitler*, 221 B.R. 934, 938 (1st Cir. BAP 1998); *In re Cantwell*, 17 B.R. at 640.

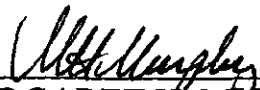
The instant circumstances weigh in favor of denying the Motion. While the record does not provide a reason for the delay, the Court is cognizant that the

deadline fell during the holidays which tend to dominate the last quarter of the year. Plaintiff has not pointed to any pattern of delay or prejudice which may arise from the untimely answer, and the short delay suggests that no significant prejudice exists. Defendant's Answer raises questions of fact, the merits of which cannot be evaluated at this point.

Here, Defendant filed an answer seven days after the deadline imposed by Rule 7012(a). Plaintiff has pleaded only technical grounds in support of striking the Answer and entering default judgment. For the reasons set forth above, it is hereby

ORDERED that the Motion is *denied*.

IT IS SO ORDERED, this the 3rd day of February, 2015.



MARGARET H. MURPHY
UNITED STATES BANKRUPTCY JUDGE