

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF SOUTH CAROLINA**

In re,

Sandra Marie Piel,

Debtor.

C/A No. 19-02260-EG

In re,

Justin Daniel Wright and Shelia Marie Wright,

Debtors.

C/A No. 19-04042-EG

Sandra Marie Piel and  
Justin Daniel Wright and Shelia Marie Wright,

Plaintiffs,

v.

World Omni Financial Corp.,

Defendants.

Chapter 13

ADV. PRO. NO.: 23-80039-EG

ADV. PRO. NO: 23-80045-EG

**(Adversary Proceedings consolidated  
pursuant to Fed. R. Bankr. P. 42)**

**ORDER SETTING ASIDE ENTRY OF DEFAULT**

**THIS MATTER** came before the Court for a hearing on October 31, 2023 on Sandra Marie Piel, Justin Daniel Wright, and Shelia Marie Wright’s (“Plaintiffs”) Motion for Entry of Default and Request for Hearing on Damages (the “Motion for Default Judgment”) filed on September 19, 2023<sup>1</sup> and Defendant World Omni Financial Corp.’s (“World Omni” or “Defendant”) Motion to Set Aside Entry of Default filed on October 3, 2023 (“Motion to Set

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<sup>1</sup> ECF Nos. 14 and 22.

Aside Entry of Default”).<sup>2</sup> A hearing on the Motion for Default Judgment and Motion to Set Aside Entry of Default was scheduled for October 31, 2023. Defendant filed a response to the Motion for Default Judgment; however, Plaintiffs did not file an objection or response to the Motion to Set Aside Entry of Default.<sup>3</sup> A contested hearing on these matters was held on October 31, 2023. Present at the hearing were counsel for World Omni; Chris Williams, Special Collections Manager at World Omni; and both attorneys for Plaintiffs. Chris William’s testimony was proffered with no objections by Plaintiffs. For the reasons set forth below, the Court finds that the Motion to Set Aside Entry of Default should be granted and that the Motion for Default Judgment is thereby rendered moot.

### **FACTS**

Sandra Marie Piel (“Piel”) is the mother of Shelia Marie Wright (“S. Wright”), who is married to Justin Daniel Wright (“J. Wright”). Prior to any of these parties filing bankruptcy, World Omni extended a loan to Piel and S. Wright that was secured by a 2016 Toyota Sienna (the “Vehicle”). Piel and S. Wright stopped making payments on the loan, and World Omni repossessed the Vehicle.

On April 25, 2019, Piel filed a petition for relief under Chapter 13 of the Bankruptcy Code, initiating C/A No. 19-02260-eg (the “Piel Bankruptcy”). On June 11, 2019, World Omni timely filed Claim No. 11-1 in the Piel Bankruptcy for \$31,491.41 secured by the Vehicle. On July 8, 2019, World Omni filed Amended Claim No. 11-2 for \$11,247.38, which represents the unsecured deficiency balance remaining after the Vehicle was sold on June 13, 2019. Section

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<sup>2</sup> ECF No. 19.

<sup>3</sup> ECF No. 20. The Notice of Hearing expressly provided that any party who failed to file an objection or response “may be denied the opportunity to be heard.” While Plaintiffs did not file a response or objection to the Motion to Set Aside Entry of Default, because they had filed and briefed the Motion for Default Judgment, at the hearing on October 31, 2023, the Court heard their arguments as to why the Motion to Set Aside Entry of Default should be denied.

5.1 of Piel's confirmed Chapter 13 plan provides general unsecured creditors will be paid less than 100% on their claims.<sup>4</sup> On August 1, 2019, J. Wright and S. Wright (the "Wrights") filed a petition for relief under Chapter 13 of the Bankruptcy Code, initiating C/A No. 19-04042-eg (the "Wright Bankruptcy"). On August 26, 2019, World Omni timely filed Claim No. 2-1 in the Wright Bankruptcy, which appears identical to Claim No. 11-2 in the Piel Bankruptcy. Section 5.1 of the Wrights' confirmed Chapter 13 plan provides general unsecured creditors will be paid less than 100% on their claims.<sup>5</sup>

On July 19, 2023, Piel filed a complaint against World Omni, initiating Adv. Pro. No. 23-80039-eg (the "Piel Adversary").<sup>6</sup> In the complaint, Piel asserts that World Omni was paid \$9,400.13 through the Piel Bankruptcy and \$7,950.07 through the Wright Bankruptcy for a total of \$17,350.20. Consequently, World Omni was overpaid on its claim by \$6,102.82. Piel asserts causes of action for turnover of property of the estate; fraud, deception, and intentional conversion of funds to which World Omni is not entitled; and violation of the automatic stay of 11 U.S.C. § 362. Piel requests (1) turnover of the overpayment as property of the estate; (2) attorney fees and costs in bringing the adversary proceeding pursuant to Fed. R. Bankr. P. 7054(b); and (3) actual and punitive damages.

On July 20, 2023, the Clerk of Court issued a summons on World Omni, with an answer to the complaint due by August 21, 2023.<sup>7</sup> On August 2, 2023, Piel filed a Certificate of Service attesting to service of the summons and complaint on World Omni on July 21, 2023, and receipt by World Omni on July 24, 2023.<sup>8</sup> On August 9, 2023, the Wrights filed a complaint against World Omni, initiating Adv. Pro. No. 23-80045-eg (the "Wright Adversary"). This complaint

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<sup>4</sup> C/A No. 19-02260-eg, ECF No. 22.

<sup>5</sup> C/A No. 19-04042-eg, ECF No. 3.

<sup>6</sup> Adv. Pro. No. 23-80039-eg, ECF No. 1.

<sup>7</sup> Adv. Pro. No. 23-80039-eg, ECF No. 2.

<sup>8</sup> Adv. Pro. No. 23-80039-eg, ECF No. 3.

is substantively identical to the complaint in the Piel Adversary. On August 10, 2023, the Clerk of Court issued a summons on World Omni, with an answer to the complaint due by September 11, 2023.<sup>9</sup>

On August 10, 2023, the Plaintiffs filed a joint Motion to Consolidate the Piel Adversary and the Wright Adversary.<sup>10</sup> On September 13, 2023, Piel filed an Affidavit of Default in the Piel Adversary<sup>11</sup> and the Wrights filed an Affidavit of Default in the Wright Adversary.<sup>12</sup> The Clerk of Court entered an Entry of Default as to World Omni in the Wright Adversary on September 14, 2023,<sup>13</sup> and in the Piel Adversary on September 15, 2023.<sup>14</sup> On September 15, 2023, the Court entered an Order consolidating the Piel Adversary and the Wright Adversary and designating the Piel Adversary as the lead case.<sup>15</sup>

On September 19, 2023, the Plaintiffs filed the Motion for Default Judgment requesting an order holding World Omni in default for failing to file an answer or other pleading after being served with their complaints and requesting a hearing to determine what World Omni received in the underlying bankruptcy cases and to determine what damages should be awarded to Plaintiffs.<sup>16</sup> On September 20, 2023, the Court entered an Order and Notice of Hearing on Damages (the “Hearing Order”).<sup>17</sup> The Hearing Order required World Omni to file any response or objection to the Plaintiffs’ Motion for Default Judgment and request for damages by October 20, 2023 and set a hearing on the Motion for Default Judgment for October 31, 2023. The Hearing Order further required Plaintiffs’ counsel to file, by October 16, 2023, separate affidavits

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<sup>9</sup> Adv. Pro. No. 23-80045-eg, ECF No. 2.

<sup>10</sup> Adv. Pro. No. 23-80039-eg, ECF No. 4. The motion was filed in the Wright Adversary on August 17, 2023 (Adv. Pro. No. 23-80045-eg, ECF No. 3).

<sup>11</sup> Adv. Pro. No. 23-80039-eg, ECF No. 8.

<sup>12</sup> Adv. Pro. No. 23-80045-eg, ECF No. 10.

<sup>13</sup> Adv. Pro. No. 23-80045-eg, ECF No. 12.

<sup>14</sup> Adv. Pro. No. 23-80039-eg, ECF No. 10.

<sup>15</sup> Adv. Pro. No. 23-80039-eg, ECF No. 11; Adv. Pro. No. 23-80045-eg, ECF No. 15.

<sup>16</sup> Adv. Pro. No. 23-80039-eg, ECF No. 14.

<sup>17</sup> Adv. Pro. No. 23-80039-eg, ECF No. 15.

as to their attorney's fees (including detailed time entries), an affidavit concerning any other damages requested, and supplemental briefing providing the applicable authority supporting an award of damages under 11 U.S.C. §§ 362 and 542.

On October 3, 2023, World Omni filed the Motion to Set Aside Entry of Default.<sup>18</sup> In the motion, World Omni asserts that neither the Plaintiffs nor anyone on their behalf contacted World Omni to inquire about the overpayments or assert any of the allegations made in the complaints prior to filing the complaints, and World Omni was not otherwise aware of any issue regarding overpayments until it received service of the adversary proceedings. Further, World Omni asserts that on August 14, 2023—prior to Plaintiffs filing Affidavits of Default—counsel for Piel sent an email to its out of state counsel, Scott Fink, that “[o]nce the cases are consolidated we plan on amending our complaints into a single cause of action so you will only have to file a single answer.” Based on that communication, World Omni believed it could wait until the adversary proceedings were consolidated and a consolidated amended complaint was filed to file an answer, and that the Plaintiffs would not seek an entry of default before then. Since no one had made an appearance for World Omni in either adversary proceeding, it did not immediately get notice that default had been entered against it. Upon receiving notice that default had been entered against it, World Omni reached out to its current local counsel on September 25, 2023 and retained him shortly thereafter. World Omni requests relief from the entries of default and additional time to file responsive pleadings to the complaints.

On October 16, 2023, Plaintiffs filed a timely brief in support of their Motion for Default Judgment that sets forth their grounds for their requested damages.<sup>19</sup> However, the brief does not contain the affidavits required by the Hearing Order. Further, the brief does not address the

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<sup>18</sup> Adv. Pro. No. 23-80039-eg, ECF No. 19.

<sup>19</sup> Adv. Pro. No. 23-80039-eg, ECF No. 22.

allegations made by World Omni regarding Plaintiffs' failure to attempt to resolve this matter before filing adversary proceedings and the email communication made by Piel's counsel to Scott Fink. On October 20, 2023, World Omni filed a timely Response to Plaintiffs' Motion for Default Judgment.<sup>20</sup> The Response repeats the arguments made in the Motion to Set Aside Entry of Default, notes that the Plaintiffs' brief in support of their Motion for Default Judgment does not include the affidavits required by the Hearing Order, and opposes the requested damages in the Plaintiffs' brief. A contested hearing was conducted on October 31, 2023.

### **CONCLUSIONS OF LAW**

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334 and 157, this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A) and (E), and the Court may enter a final order. The Court is presented with two issues: (1) whether to grant World Omni's Motion to Set Aside Entry of Default, and (2) if the entry of default should not be set aside, whether to grant default judgment and damages to the Plaintiffs as set forth in the Motion for Default Judgment and supporting brief. Because the Court concludes that the entry of default against World Omni should be set aside, the Court will not reach the second issue.

Fed. R. Civ. P. 55(c), made applicable to adversary proceedings by Fed. R. Bankr. P. 7055, provides, in relevant part, "[t]he court may set aside an entry of default for good cause[.]" When deciding whether to set aside an entry of default, the Court should consider the following factors: (1) whether the moving party has a meritorious defense; (2) whether the moving party acts with reasonable promptness; (3) the personal responsibility of the defaulting party; (4) the prejudice to the nonmoving party; (5) whether there is a history of dilatory action; and (6) the availability of sanctions less drastic. *Martinez v. Truist Bank*, No. 7:23-3953-HMH, 2023 WL

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<sup>20</sup> Adv. Pro. No. 23-80039-eg, ECF No. 23.

6810303, at \*1 (D.S.C. Oct. 16, 2023) (quoting *Payne ex rel. Est. of Calzada v. Brake*, 439 F.3d 198, 204-05 (4th Cir. 2006)). “The Fourth Circuit has ‘repeatedly expressed a strong preference that, as a general matter, defaults be avoided and that claims and defenses be disposed of on their merits.’” *Fort v. Branch Banking and Tr. Co. (In re JAT, Inc.)*, C/A No. 13–07552–HB, Adv. Pro. No. 15–80205–HB, 2016 WL 1049166, at \*5 (Bankr. D.S.C. Mar. 15, 2016) (quoting *Colleton Preparatory Academy, Inc. v. Hoover Universal, Inc.*, 616 F.3d 413, 420-21 (4th Cir. 2010)). When applying each of these factors to the facts before it, the Court concludes that World Omni’s Motion to Set Aside Entry of Default should be granted.

## **I. MERITORIOUS DEFENSE**

“The standard for showing a meritorious defense is not high and requires merely ‘some possibility’ of a result in [the defaulting party’s] favor at trial.” *Id.* (citing *Augusta Fiberglass Coatings, Inc. v. Fodor Contracting Corp.*, 843 F.2d 808, 812 (4th Cir. 1988); *United States v. Moradi*, 673 F.2d 725, 727 (4th Cir. 1982)). While World Omni acknowledges in its Motion to Set Aside Entry of Default that it may not have a complete defense to the complaints and that it was overpaid, World Omni has raised various defenses and arguments in its Response to the Motion for Default Judgment that establish a meritorious defense well beyond the minimum threshold, and it has raised sufficient arguments to support the possibility that it may prevail after a full trial. Accordingly, this factor weighs in favor of granting World Omni relief from Entry of Default.

## **II. REASONABLE PROMPTNESS**

“Whether a party has taken ‘reasonably prompt’ action, of course, must be gauged in light of the facts and circumstances of each occasion[.]” *Id.* (quoting *Moradi*, 673 F.2d at 727). “District courts in the Fourth Circuit have found that a defendant acted reasonably promptly when waiting seventeen, twenty-one, and thirty-two days after default was entered before

attempting to set it aside.” *Burton v. The TJX Cos., Inc.*, No. 3:07-CV-760, 2008 WL 1944033, at \*3 (E.D. Va. May 1, 2008) (citing cases). In this case, World Omni filed the Motion to Set Aside Entry of Default 19 days after entry of default in the Wright Adversary and 20 days after entry of default in the Piel Adversary. This appears to fall within the range of “reasonable promptness” as previously held in the Fourth Circuit; therefore, this factor weighs in favor of granting World Omni relief from the entry of default.

### **III. PERSONAL RESPONSIBILITY**

World Omni bears some responsibility for failing to timely respond to the complaints. There is no dispute that it was served with the complaints, and it did not file an answer or other responsive pleading by the deadlines in each adversary proceeding. However, World Omni appears, through out-of-state counsel, to have relied on the representation of counsel for Piel that the appropriate time to file an answer would be after the complaints were consolidated into one, which has not occurred. While World Omni should not have relied on this representation and should have promptly retained South Carolina counsel familiar with local rules and practices, including SC LBR 7001-1(b), the correspondence between counsel for Piel and World Omni’s out-of-state counsel appears to have led to some confusion, resulting in World Omni being under the impression that Plaintiffs would amend their complaint and thus the time to answer would be extended. Moreover, World Omni’s counsel had also requested a formal demand amount to possibly resolve the dispute short of litigation. Accordingly, this factor is neutral in the analysis.

### **IV. PREJUDICE TO THE NONMOVING PARTY**

It does not appear the Plaintiffs would suffer any prejudice by relieving World Omni from entry of default, and Plaintiffs have not articulated any. While the Court acknowledges that granting the Motion to Set Aside Entry of Default would require the litigation to continue, thus causing Plaintiffs to possibly incur additional attorney fees, the award of attorney fees is



part of the relief requested by the complaints and central to the underlying dispute; accordingly, to the extent they are recoverable, they will be considered as part of the damages if Plaintiffs prevail on their causes of action at trial. Thus, this factor weighs in favor of granting World Omni relief from Entry of Default.

## **V. HISTORY OF DILATORY ACTION**

“Dilatory” means (1) “[d]esigned or tending to cause delay”, or (2) “[g]iven to or characterized by tardiness.” *Dilatory*, BLACK’S LAW DICTIONARY (11th ed. 2019). “When considering a party’s history of dilatory action, the proper focus for the Court’s analysis is the defaulting party’s actions in connection with the procedural issue before the Court, not the allegations that go to the merits of the case.” *Pearson v. Pearson (In re Pearson)*, C/A No. 16-02593-JW, Adv. Pro. No. 16-80160-JW, slip op. at 9 (Bankr. D.S.C. Apr. 14, 2017) (citing *Brewer v. HSBC (In re Brewer)*, Adv. Pro. No. 16-80151-jw, slip op. at n.10 (Bankr. D.S.C. Feb. 21, 2017)). There is no history of dilatory action by World Omni, and it acted reasonably promptly in seeking relief from entry of default. Further, there is no evidence that World Omni has deliberately sought to delay these proceedings. Accordingly, this factor weighs in favor of granting World Omni relief from Entry of Default.

## **VI. AVAILABILITY OF LESS DRASTIC SANCTIONS**

There do not appear to be less drastic sanctions than default available to Plaintiffs. “[S]anctions of a less drastic nature” may include “payment of costs [and] attorneys’ fees[.]” *Fort*, 2016 WL 1049166, at \*6 (quoting *Chandler Leasing Corp. v. Lopez*, 669 F.2d 919, 921 (4th Cir. 1982)). As mentioned above, the award of attorney fees, to the extent they are recoverable, will be considered as part of the damages due Plaintiffs if they prevail on their causes of action at trial.


In summary, the factors noted above, coupled with the Fourth Circuit's strong preference for resolving disputes on their merits, lead the Court to conclude that World Omni should be granted relief from the Entries of Default in both adversary proceedings.

**IT IS, THEREFORE, ORDERED:**

- 1) World Omni Financial Corp.'s Motion to Set Aside Entry of Default is granted;
- 2) World Omni Financial Corp. is granted relief from the Entry of Default entered in Adv. Pro. No. 23-80045-eg on September 14, 2023 and from the Entry of Default entered in Adv. Pro. No. 23-80039-eg on September 15, 2023;
- 3) World Omni Financial Corp. shall file an answer or other responsive pleading to the complaint in Adv. Pro. No. 23-80039-eg **within fourteen (14) days of entry of this order**; and
- 4) Plaintiffs Sandra Marie Piel, Shelia Marie Wright, and Justin Daniel Wright's Motion for Default Judgment is deemed moot.

**FILED BY THE COURT  
10/31/2023**



  
Elisabetta G. M. Gasparini  
US Bankruptcy Judge  
District of South Carolina

Entered: 10/31/2023