

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
WACO DIVISION**

KT IMAGING USA, LLC,

Plaintiff,

v.

REOLINK DIGITAL TECHNOLOGY CO.,
LTD,

Defendant.

Civil Action No.: 6:22-cv-00876-ADA

UNOPPOSED MOTION TO SET ASIDE CLERK’S ENTRY OF DEFAULT

I. INTRODUCTION

Defendant Reolink Digital Technology Co., LTD. (“Reolink”) moves to set aside the Clerk’s Entry of Default dated June 22, 2023. There is good cause to set aside the default because Reolink did not willfully default, Reolink has meritorious defenses, Reolink acted expeditiously upon learning of the default, and Plaintiff KT Imaging USA, LLC (“KTI”) will not be prejudiced.

Although Reolink contends that KTI failed to effectuate valid service of process, Reolink agreed, on July 5, 2023, to waive service and to file an answer to the complaint by August 4, 2023. While KTI disagrees with the substance and merits of Reolink’s arguments, KTI has nevertheless agreed not to oppose this motion.

II. BACKGROUND

Plaintiff KTI filed a complaint on August 22, 2022 alleging patent infringement by Defendant Reolink. The Parties dispute whether KTI effectuated service of Process.

KTI contends that valid service of process was effectuated on September 14, 2022. Dkt. 12-1 at 2. Specifically, KTI contends that service was effectuated via (i) the mailing, on August 25, 2022 using certified international mail return receipt requested by a paralegal at Kheyfits Belenky LLP, of a copy of the summons and complaint to the address RM 517, New City Center, 2 Lei Yue Mun Road, Kwun Tong, Kowloon, Hong Kong found in Reolink’s own press releases and (ii) the delivery of said mailing on September 14, 2022. Dkt. 12-1 at 1–2.

Reolink contends that KTI’s attempt to serve Reolink was ineffective for several reasons. First, while the complaint alleges infringement by “Reolink Digital Technology Co., Ltd.,” “a corporation organized in China having its principal place of business at A218, ShiWaiTaoYuan ChuanyiYuan, 1st of PingShan Road, Xili, NanShan Shenzhen China,” the copy of the summons and complaint were mailed to an address in Hong Kong. Reolink contends that an address in Hong Kong cannot serve as a proper address to serve a Chinese corporation, and that KTI’s attempt to serve Reolink by mail in Hong Kong was improper. Second, while the copy of the summons and complaint were allegedly addressed to Reolink at the address RM 517, New City Center, 2 Lei Yue Mun Road, Kwun Tong, Kowloon, Hong Kong, no Reolink entity has an office located at that address. Chatham Decl. (Exhibit A) ¶ 11. Instead, as indicated in the return receipt card provided by KTI, the documents KTI mailed were received by MH Secretary Limited. Dkt. 9-4 at 2. MH Secretary Limited appears to be a registration agent for Hong Kong corporations. Chatham Decl. ¶ 11. However, no Reolink entity currently uses or is associated with MH Secretary Limited. *Id.*

On June 22, 2023, KTI moved for entry of default as to Defendant Reolink. Dkt. 12. On the same day, the Clerk entered the default of Reolink. Dkt. 13. On June 23, 2023, KTI informed counsel for Reolink of the Clerk’s entry of the default of Reolink. Chatham Decl. ¶

10. On June 26, 2023, counsel for Reolink informed counsel for KTI that Reolink disputed the propriety of KTI's purported service of process and also offered to waive service if Reolink was willing to agree to certain conditions. *Id.* ¶ 12. On June 27, 2023, counsel for KTI offered to not oppose Reolink's motion to set aside the default if Reolink agreed to certain conditions. *Id.* ¶ 14. On June 30, 2023 counsel for Reolink informed counsel for KTI that Reolink intended to file a motion to set aside the Clerk's entry of the default of Reolink, and on July 5, 2023, counsel for Reolink signed a waiver of the service of summons that specifies a due date for the filing and service of an answer to the complaint by August 4, 2023. *Id.* ¶ 14.

III. LEGAL STANDARD

"The court may set aside an entry of default for good cause[.]" Fed. R. Civ. P. 55(c). The good cause standard under Rule 55(c) is a "liberal standard," and the Fifth Circuit "has adopted a policy favoring resolution of cases on their merits and against the use of default judgments." *BAMM Holdings, Inc. v. Plum Safety Aps*, No. 6:20-cv-618-ADA, 2021 WL 4877660, at *2 (W.D. Tex. Sept. 15, 2021) (citing *Lacy v. Sitel Corp.*, 227 F.3d 290, 292 (5th Cir. 2000)). "Strict enforcement of defaults [is] not favored and 'has no place in the Federal Rules.'" *Id.* (quoting *Amber v. FDIC*, 934 F.2d 681, 686 (5th Cir. 1991)). Because of this more liberal standard, "a motion to set aside an entry of default 'is more readily granted than a motion to set aside a default judgment.'" *Id.* (quoting *In re Dierschke*, 975 F.2d 181, 184 (5th Cir. 1992)).

When applying Rule 55(c)'s good cause standard, courts "should consider: (1) whether the default was willful; (2) whether a meritorious defense is presented; and (3) whether setting it aside would prejudice the adversary." *Id.* (citing *Lacy*, 227 F.3d at 292). Courts may also "consider other factors, such as, whether the defaulting party acted expeditiously to correct the default upon learning of the same." *Id.* When applying these factors, "any doubt should . . . be

resolved in favor of the movant to the end of securing a trial upon the merits.” *Effjohn Int’l Cruise Holdings, Inc. v. A&L Sales, Inc.*, 346 F.3d 552, 563 (5th Cir. 2003) (quoting *Lacy*, 227 F.3d at 292).

IV. ARGUMENT

1. Reolink Did Not Willfully Default Because It Had No Obligation To File Responsive Pleadings.

Reolink has not defaulted, let alone willfully defaulted, because KTI did not serve Reolink. “A defendant has no obligation to appear in court or defend an action before it is formally served with process directing it to appear before that forum.” *Thompson v. Deutsche Bank Nat’l Tr. Co.*, 775 F.3d 298, 303 (5th Cir. 2014) (emphasis omitted). In fact, the Court lacks jurisdiction over Reolink until after KTI effectuates “valid service of process.” *Attwell v. LaSalle Nat’l Bank*, 607 F.2d 1157, 1159 (5th Cir. 1979).

KTI purported to serve Reolink by mailing a copy of the summons and the complaint to a Hong Kong address. Dkt. 12-1 at 1–2. But Reolink has no office at the Hong Kong address to which KTI mailed the copy of the summons and the complaint. Chatham Decl. ¶ 11. Furthermore, the record is devoid of any evidence that KTI attempted to serve Reolink at its principal place of business as identified in the complaint, i.e. A218, ShiWaiTaoYuan ChuanyiYuan, 1st of PingShan Road, Xili, NanShan Shenzhen China. In addition, service by mail pursuant to Federal Rule 4(f)(2)(C)(ii) requires “using a form of mail that the clerk addresses and sends....” KTI did not comply with this requirement, as it relied on a paralegal employed by its outside counsel (i.e. Kheyfits Belenky LLP) to address and send the documents—not the Clerk of Court. Accordingly, KTI has not met its burden of proof to show effective service, and Reolink had no obligation to file responsive pleadings. *See Carimi v.*

Royal Caribbean Cruise Line, Inc., 959 F.2d 1344, 1346 (5th Cir. 1992) (recognizing that the plaintiff bears the burden of proving valid service); *Urbina v. United Parcel Serv., Inc.*, No. A-05- CA-888-LY, 2007 WL 9710575 (W.D. Tex. June 21, 2007) (setting aside default when plaintiff served “Sup. Tarrant,” who was not an authorized agent for the defendant).

If the Court finds, however, that Reolink has defaulted, then Reolink’s failure to file responsive pleadings was a mistake, not a willful default. *Hockenbergs Equip. & Supply Co. v. Team Contractors, LLC*, No. EP-18-cv-346-PRM, 2019 WL 1253576, at *6 (W.D. Tex. Mar. 11, 2019) (concluding that the defendant’s default was not willful because it mistakenly believed that service had not been effected).

2. Reolink Has Meritorious Defenses.

Reolink has meritorious defenses if it can show “some possibility that the outcome of the suit after a full trial will be contrary to the result achieved by default.” *BAMM Holdings*, 2021 WL 4877660, at *2 (quoting *In re OCA, Inc.*, 551 F.3d 359, 373 (5th Cir. 2008)). “A defendant’s allegations are meritorious if they contain even a hint of a suggestion which proven at trial, would constitute a complete defense.” *Joe Hand Promotions, Inc. v. Adame*, No. EP-12-cv-141-KC, 2012 WL 3561367, at *3 (W.D. Tex. Aug. 16, 2012) (internal quotation marks and citations omitted). “Indeed, even an obtuse showing of a meritorious defense will suffice.” *Id.*

Reolink’s defenses unquestionably pass muster. KTI alleges that Reolink infringes two patents held by KTI—i.e. U.S. Patent No. 8,004,602 (“the ’602 Patent”) and U.S. Patent No. 8,314,481 (“the ’481 Patent”). Reolink anticipates raising, *inter alia*, defenses of non-infringement and invalidity.

There is more than “some possibility” that Reolink’s defenses are meritorious. Specifically, with respect to the ’602 Patent, claim 1 thereof requires “a lens module comprising a holder having a through hole and a contact surface on a bottom of the holder, wherein the contact surface is combined with the first surface, and at least one lens completely embedded inside the through hole and integrated with the holder,” while Reolink’s accused products do not include such a lens module. With respect to the ’481 Patent, claim 1 thereof requires “a frame layer arranged on and in direct surface contact with the first electrodes and the insulation layer to form a cavity together with the bottom base, wherein the insulation layer is interposed between the bottom base and the frame layer,” but Reolink’s accused products do not include such a frame layer. Furthermore, claim 1 of the ’602 Patent and claim 1 of the ’481 Patent are invalid for failure to meet the conditions of patentability or otherwise comply with one or more of the provisions of 35 U.S.C. §§ 101 et. seq., including, but not limited to, 35 U.S.C. §§ 101, 102, 103, and/or 112.

3. KTI Will Not Be Prejudiced Because At Most The Case Has Been Delayed By A Few Months.

A plaintiff is not prejudiced where “setting aside of the default has done no harm to [the] plaintiff except to require it to prove its case.” *Lacy*, 227 F.3d at 293 (quoting *Gen. Tel. Corp. v. Gen. Tel. Answering Serv.*, 277 F.2d 919, 921 (5th Cir. 1960)). Nor does delay alone constitute prejudice. *Id.* Instead, KTI “must show that the delay will result in the loss of evidence, increased difficulties in discovery, or greater opportunities for fraud and collusion.” *Id.* (quoting *Berthelsen v. Kane*, 907 F.2d 617, 621 (6th Cir. 1990)).

KTI cannot make such a showing. In the unlikely event the Court finds KTI’s mailing a copy of the summons and complaint to MH Secretary Limited in Hong Kong constituted valid

service, then Reolink's responsive pleadings will be filed within 66 days of the date on which Reolink first became aware of such mailing. The record is devoid of any suggestion that evidence was lost, memories faded, or collusion occurred during that time.

4. Reolink Acted Expeditiously By Filing This Motion Within A Month Of Learning About The Entry Of Default.

The Fifth Circuit has held that retaining counsel and filing a motion to set aside entry of default within a month of learning of the entry favors setting aside the default. *Jenkins & Gilchrist v. Groia & Co.*, 542 F.3d 114, 122 (5th Cir. 2008). Here, counsel for Reolink learned of the entry of default on June 23, 2023. Chatham Decl. ¶ 10. Now, less than a month later, Reolink moves to set aside the default. Accordingly, the Court should grant Reolink's expeditious request that the entry of default be set aside.

V. CONCLUSION

For the foregoing reasons, Reolink respectfully requests that the Court grant this motion and issue an order setting aside the entry of default, setting a deadline of August 4, 2023 by which Reolink may answer or otherwise respond to Plaintiff's complaint, and granting Reolink such other and further relief to which it may show itself justly entitled, in law or in equity.

Dated: July 14, 2023

Respectfully submitted,

/s/ J. Daniel Harkins

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CERTIFICATE OF SERVICE

I hereby certify that on July 14, 2023, a true and correct copy of the foregoing document was served on all counsel of record through the ECF system in accordance with the Federal Rules of Civil Procedure.

/s/ J. Daniel Harkins

J. Daniel Harkins