

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HERMAN E. GARNER,

Plaintiff,

v.

PROCLIP USA, INC.,

Defendant.

ORDER

15-cv-653-bbc

Plaintiff Herman Garner is suing defendant ProClip USA, Inc. for race discrimination, in violation of Title VII of the Civil Rights Act of 1964. Defendant is countersuing plaintiff for conversion and tortious interference. Now before the court is plaintiff's motion for leave to file an untimely answer to defendant's counterclaim. Dkt. #13. Plaintiff says that he missed the deadline by approximately 10 days because of "an inadvertent docketing error." Id.

Defendant objects to plaintiff's late filing on the ground that plaintiff has not adequately justified his actions, but defendant does not identify any prejudice it has suffered from plaintiff's delay. If I were to deny plaintiff's motion, the result would be to enter a default judgment against plaintiff on defendant's counterclaims. The Court of Appeals for the Seventh Circuit has a "well established policy" for "favoring a trial on the merits over a default judgment." Sun v. Board of Trustees of University of Illinois, 473 F.3d 799, 811-12

(7th Cir. 2007). For this reason, a court may enter a default judgment “only when a party wilfully disregards pending litigation.” Id. Even if plaintiff was negligent in failing to file an answer sooner, defendant cites no evidence that plaintiff’s 10-day delay shows willful disregard for this case.

ORDER

IT IS ORDERED that plaintiff Herman Garner’s motion for leave to file an untimely answer to defendant ProClip USA, Inc.’s counterclaim, dkt. #13, is GRANTED.

Entered this 29th day of February, 2016.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge