

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

TOWN OF LEE, MASSACHUSETTS

Plaintiff,

v.

MONSANTO COMPANY

SOLUTIA INC.

PHARMACIA LLC

GENERAL ELECTRIC . ELECTRIC

CORPORATION

Defendants.

Case No.: 3:24-cv-30050-MGM

**DEFENDANT GENERAL ELECTRIC COMPANY'S
OPPOSITION TO PLAINTIFF'S MOTION TO DEFAULT**

Defendant, General Electric Company, now operating as GE Aerospace and improperly named as “General Electric. Electric Corporation” (hereinafter “GE”), opposes Town of Lee, Massachusetts’ (“Lee”) Motion to Default General Electric for Failure to Respond to Plaintiff’s Rule 56 Motion (“Motion to Default”) for being filed prematurely and for failing to comply with the meet and confer requirement of Local Rule 7.1. In support of its Opposition, GE states the following:

I. RELEVANT BACKGROUND

On April 9, 2024, GE removed this case to the United States District Court, District of Massachusetts. ECF No. 1. On May 6, 2024, Lee filed a Motion for Summary Judgement with the Court, followed by an amended Motion for Summary Judgment on May 10, 2024. ECF Nos. 10-11. On May 21, 2024, the Court issued summonses to all defendants for Lee’s counsel to serve in accordance with Fed. R. Civ. P. 4 and Local Rule 4.1. ECF No. 12. On June 17, 2024, GE completed the Waiver of Service of Summons, agreeing to waive service of the summons and complaint in this matter and, consequently, receive a 60-day deadline from June 12, 2024 for the

filing of any responsive pleading to Lee's Complaint. ECF No. 14-1. The deadline for a responsive pleading to Lee's Complaint is August 12, 2024.

On June 19, 2024, counsel for Lee advised counsel for GE that Lee would file a Motion to Default judgment against GE for failing to timely respond to Lee's motion for partial summary judgment. See **Exhibit A**: E-mail correspondence dated 6/19/24 at 9:14am. The communication further indicated that Lee's counsel would be unavailable that day, but requested that GE advise, via e-mail by 5:00pm, whether it assents to or opposes Lee's motion. See *id.* That same day, counsel for GE, via e-mail, requested additional information as to Lee's basis for the motion. See **Exhibit B**: Email correspondence dated 6/19/24 at 12:19pm. Lee filed its Motion to Default against GE anyway, on June 20, 2024. ECF No. 14.

II. ARGUMENT

A. GE's Response to Lee's Motion for Summary Judgment Has Not Yet Come Due and Thus the Motion to Default, Which Requests an Improper Remedy, Is Not Ripe for Review by the Court.

On June 20, 2024, Lee filed its Motion to Default of GE for failure to respond to Lee's Motion for Summary Judgment, presumably pursuant to Fed. R. Civ. P. 55, asking the Court to find GE responsible for damages and for the damages amount to be established at trial. Lee's Motion to Default misstates the governing time period which parties have to respond to motions pursuant to Fed. R. Civ. P. 56 and seeks an improper remedy.

i. Lee's Motion for Summary Judgment Was Never Served Upon GE Prior to GE's Waiver of Service of the Complaint and Thus the Deadline for Filing any Opposition to Lee's Motion for Summary Judgment Has Not Run.

Although the window of time during which a plaintiff may file a pleading or motion is large in a civil action, there are particularized time periods imposed by the rules for responsive pleadings and oppositions to motions. See *generally* Fed. R. Civ. P. 12, 56; L.R. 7.1; 56.1. To initiate an action, a plaintiff must not only file a Complaint with the court, but it must serve the

defendant with a summons and the complaint unless said defendant waives service pursuant to Fed. R. Civ. P. 4(d). That service initiates a defendant's obligation to file a responsive pleading because that is when a defendant actually becomes a party to a case. *See* Fed. R. Civ. P. 4; *see also* *Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999) (only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend does one become an official party to a case required to take action in that capacity). Service of process also impacts the manner in which service is permitted for all subsequent filings after the original complaint. *See* Fed. R. Civ. P. 4, 5. Therefore, without proper service of the complaint, a defendant has no obligation to respond to any pleadings or motions filed with the court. *See* *Murphy Bros.*, 526 U.S. at 350 (service of process is fundamental to any procedural imposition on a named defendant).

In this case, Lee filed its Complaint in the Berkshire Superior Court on March 14, 2024. On April 9, 2024, GE removed the case to the United States District Court, District of Massachusetts prior to being served with the Complaint, in accordance with 28 U.S.C. § 1442(a)(1). *See* *Novak v. Bank of N.Y. Mellon Trust Co.*, 783 F.2d 910, 914 (1st Cir. 2015) (formal service is not required for a defendant to file a notice of removal). Despite removing the case, GE did not become an official party to this action, requiring it to appear and defend the matter, until June 17, 2024, when it completed the Waiver of Service of Summons, agreeing to waive service of the summons and complaint and accept a 60-day deadline from June 12, 2024 for filing a responsive pleading to Lee's Complaint. ECF No. 14-1; *see also* Fed. R. Civ. P. 12(a)(1)(A)(i-ii). When GE waived service of the Complaint on June 17, 2024, it also accepted service of Lee's Motion for Summary Judgment with Corrected Memorandum and First Amended Complaint. ECF. No. 11. As such, GE is preparing a Motion to Strike Lee's aforementioned Motion for

Summary Judgment to be filed by the deadline of July 8, 2024. Given that GE's deadline to respond to Lee's Motion for Summary Judgment has yet to occur, Lee's Motion to Default is not ripe for hearing.

ii. *Lee's Motion to Default Seeks an Improper Remedy.*

Lee filed its Motion to Default presumably pursuant to Fed. R. Civ. P. 55, stating that GE failed to respond to its Motion for Summary Judgment and therefore, the Court should default GE and find that it is responsible for damages. ECF No. 14. Lee's request is improper. Should a party not respond to a Motion for Summary Judgment, the Court would then evaluate the motion for summary judgment and take any action it deems appropriate, including, but not limited to, granting summary judgment if the motion and supporting materials show that the movant is entitled to it as a matter of law, grant summary judgment for a nonmovant, grant the motion on grounds not raised by a party, consider summary judgment on its own after identifying for the parties material facts that may not genuinely be in dispute, or issue any other appropriate order. See Fed. R. Civ. P. 56(e)-(f). Entering a default judgment is only proper in matters where a "plaintiff's claim is for a sum certain or a sum that can be made certain by computation." Fed. R. Civ. P. 55. In other words, default judgment is available only in cases where the value of damages has already been determined, or that can be easily determined. Where the plaintiff affirmatively seeks a trial on the issue of damages within its Motion to Default, its request is inappropriate as it seeks an improper remedy.

B. Lee's Motion to Default Should be Stricken for Failing to Confer with GE Prior to its Filing.

Prior to filing any motion, a party is required to confer with its opponent, in good faith, to resolve and narrow the issue being asserted in said motion. L.R. 7.1. In doing so, the moving party must file a certification, appended to its Motion, indicating that it complied with its obligation

pursuant to Local Rule 7.1 concerning motion practice. L.R. 7.1. Rule 7.1 was designed to serve as a meaningful tool to (1) foster discussion between parties about matters before they come before the court and (2) preserve scarce judicial resources. *See Martinez v. Hubbard*, 172 F. Supp. 3d 378, 385-86 (D. Mass 2016). Conference pursuant to Rule 7.1 is “not an empty exercise.” *Id.*

In filing its Motion to Default, Lee failed to confer with GE in good faith as required by Local Rule 7.1. More specifically, on June 19, 2024, counsel for Lee sent an electronic communication to counsel for GE indicating that he planned to file, on behalf of Lee, a Motion for Default Judgment against GE for its alleged failure to timely respond to Lee’s partial motion for summary judgment. *See **Exhibit A***. Counsel further indicated that he would be out of the office that day but required GE to respond by 5:00 pm whether it opposed or consented to the motion. *See id.* Rule 7.1 states that “[n]o motion shall be filed unless counsel certify that they have conferred and have attempted in good faith to resolve or narrow the issue.” L.R. 7.1 (emphasis added). After receiving the aforementioned communication, counsel for GE requested additional information as to Lee’s basis for the motion, but no further communications were received and the Motion to Default was filed. *See **Exhibit B***. In its Certificate of Service, Lee indicates only that “GE . . . implied that [it] will oppose this motion.” ECF No. 14. As no dialogue was exchanged concerning the basis for Lee’s motion, and no opportunity to have such a dialogue was proposed, contemplated, or afforded by Lee, there was no meaningful attempt to confer to resolve or narrow the issue.

It Is important to note that the goals of Local Rule 7.1 are so important that the Court has found that “[s]anctions for non-compliance [with Local Rule 7.1] are both available and appropriate” and no prejudice to a party needs to be demonstrated for sanctions to attach. *Sun Cap. Partners III, LP v. New England Teamsters & Trucking Indus. Pension Fund*, 329 F.R.D.

102, 105 (D. Mass. 2018). GE is not seeking sanctions – monetary or otherwise – for Lee’s failure to comply with the meet and confer requirement. However, GE does ask this Honorable Court to instruct Lee to meaningfully engage in this practice moving forward. *See Hootstein v. Amherst-Pelham Reg’l Sch. Comm.*, 361 F. Supp. 3d 94, 102-03 (D. Mass. 2019) (Court ordered parties to comply with meet and confer requirements where a party failed to do so).

C. Lee’s Arguments Within Its Memorandum of Law in Support of Dkt #14 Motion for Judgment Have No Relevance to the Review of the Motion to Default Before the Court.

On June 26, 2024, Lee filed a Memorandum of Law in Support of Dkt #14 Motion for Judgment outlining three issues that do not bear on the Motion to Default presently before the Court. ECF No. 15. First, Lee argues that the United States District Court, District of Massachusetts, has personal jurisdiction over GE in this matter, an issue that GE has not raised and has no bearing on the Motion to Default. *Id.* In fact, GE has waived service of the summons and complaint by which it has become a proper defendant in this litigation. ECF No. 14-1. GE’s disagreement is with Lee’s calculation for its response to Lee’s Motion for Partial Summary Judgment and, consequently, Lee’s Motion to Default. *See supra* II(a)(i). Second, Lee indicates that this Court is the most appropriate forum to hear the claims within its Complaint, a point which GE agrees with as evidenced by its removal of the matter to this Court on April 9, 2024. ECF No. 1. Lastly, Lee asserts that some of GE’s allegations within its removal papers are false and that GE was required to serve its response to Lee’s Motion for Summary Judgment on June 8, 2024. ECF No. 15. For the reasons set forth above in Part II(a)(i), GE disagrees with Lee’s calculation for the deadline of its opposition to Lee’s Motion for Summary Judgment. As for the allegations that GE’s assertions within its removal papers are false, which GE adamantly denies, those issues of fact must be left to be litigated at a trial of this matter.

III. CONCLUSION

For the foregoing reasons, GE respectfully requests this Honorable Court to deny Lee's Motion to Default and enter an Order instructing Lee to meaningfully engage in Local Rule 7.1's meet and confer requirement practice moving forward.

Dated: July 1, 2024.

DEFENDANT
GENERAL ELECTRIC COMPANY,

By its Attorneys,

/s/ James M. Campbell

James M. Campbell (BBO #541882)
Christopher B. Parkerson (BBO #662952)
Michelle M. Byers (BBO #684836)
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CERTIFICATE OF SERVICE

I, James M. Campbell, hereby certify that on July 1, 2024, I electronically filed the foregoing with the Clerk of the Court using the Court's electronic filing system (ECF). The foregoing document is also available for viewing and/or downloading from ECF.

/s/ James M. Campbell

James M. Campbell

EXHIBIT A

From: [Cristobal Bonifaz](#)
To: [Byers, Michelle](#)
Cc: [Cristobal Bonifaz](#)
Subject: Motion for Default Judgment on Rule 56 Motion
Date: Wednesday, June 19, 2024 9:14:33 AM
Attachments: [external.png](#)



Hi Michelle:

In re: CA NO: 3:24-CV-30050-MGM

I plan to file today on behalf of the Town of Lee a Motion for default judgment on Plaintiff's Motion for summary judgment filed under Rule 56. I am contacting you in accord with the local rules of this court to determine whether GE will consent for the Court to issue the requested default judgment ,for lack of timely response, or whether GE will oppose the proposed Motion.

I will be out of the office today but please drop me an email stating whether GE will assent or oppose the motion before 5PM today.

If I do not hear from you by 5PM today one way or another I will notify the court with the filing.

Thanks,

Cristobal Bonifaz

Attorney for the Town of Lee.

This email has been scanned for spam and viruses. Click [here](#) to report this email as spam.

EXHIBIT B

From: Byers, Michelle
Sent: Wednesday, June 19, 2024 12:18 PM
To: Cristobal Bonifaz
Cc: Campbell, James M.; Parkerson, Christopher B.
Subject: RE: Pittsfield: Town of Lee Motion for Default Judgment on Rule 56 Motion

Good afternoon Cristobal,

Thank you for your email. Where GE was only served with process in the case as of Monday when the waiver of service was executed, please advise on what basis you believe GE has failed timely to respond to the summary judgment motion. This information will help assess GE's position on the Town of Lee's anticipated motion and provide you a response to your question.

Thank you,

Michelle

Michelle M. Byers
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From: Cristobal Bonifaz <ccrbonifaz@gmail.com>
Sent: Wednesday, June 19, 2024 9:14 AM
To: Byers, Michelle <MByers@campbell-trial-lawyers.com>
Cc: Cristobal Bonifaz <ccrbonifaz@gmail.com>
Subject: Motion for Default Judgment on Rule 56 Motion

External email

Hi Michelle:

In re: CA NO: 3:24-CV-30050-MGM

I plan to file today on behalf of the Town of Lee a Motion for default judgment on Plaintiff's Motion for summary judgment filed under Rule 56. I am contacting you in accord with the local rules of this court to determine whether GE will consent for the Court to issue the requested default judgment ,for lack of timely response, or whether GE will oppose the proposed Motion.

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If I do not hear from you by 5PM today one way or another I will notify the court with the filing.

Thanks,

Cristobal Bonifaz

Attorney for the Town of Lee.

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