

STATE OF MAINE  
CUMBERLAND, ss

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SUPERIOR COURT  
CIVIL ACTION  
DOCKET NO. CV-20-003

SMILING HILL FARM, INC.,

Plaintiff

v.

ORDER

JAMES ROBERTSON, et al.,

Defendants

Plaintiff Smiling Hill Farm Inc. is seeking the entry of defaults.

REG. CLERK'S OFFICE  
JUN 12 '20 10:14 AM

Defendants James and Heather Robertson appeared and filed a motion on March 2, 2020 seeking an extension to move or answer until March 24. That motion was overtaken by the pandemic orders and was never acted on by the court. Assuming that the motion had been granted, however, the Robertsons would have had a 49 day extension until May 12, 2020 to serve a response to the complaint. However, given the pandemic and the fact that their motion for extension had never been acted on, it is not unreasonable that Robertsons were uncertain what deadline was in effect.

Smiling Hill sought an entry of default on May 13, only one day after the Robertsons' time would have expired.<sup>1</sup> However, Smiling Hill did not file original affidavits in compliance with the Service Members Civil Relief Act until May 18 and May 28. A week later, before any defaults had been entered, the Robertsons filed answers and requested that the court accept those answers and allow them to litigate the case.

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<sup>1</sup> In the event that defendants had served answers by mail on May 12, plaintiff would have jumped the gun.

Given the difficulties and confusion caused by the pandemic and the various pandemic management orders, the court is not prepared to enter defaults against the Robertsons on this record. Indeed, the Law Court has suggested that, when a party has already appeared and is prepared to litigate the issues, only "serious instances of noncompliance with pretrial procedures" should lead to a default. *Design Build of Maine v. Paul*, 601 A.2d 1089, 1091 (Me. 1992). The Robertsons' relatively short delay in filing answers in this case does not constitute a serious instance of noncompliance.

The entry shall be:

Plaintiff's requests for entries of default are denied, and the answers filed by defendants on June 4, 2020 are accepted. Scheduling order to issue. The clerk shall incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: June 12, 2020

  
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Thomas D. Warren  
Justice, Superior Court

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Entered on the Docket: 06/15/20

Plaintiff—Jason Theobald, Esq.  
Defendants—Pro Se