



it maintains with the State Corporation Commission and at an alternative address set forth in an underlying contract between the parties.<sup>1</sup> On the same day, Plaintiff served the Motion for Default on Defendant's registered agent by certified mail. It is undisputed that the registered agent received the Motion for Default no later than September 2, 2025. Also, by September 2, 2025, Defendant had been sent notice of the pending lawsuit no fewer than four times.

Defendant did not seek relief from default until October 9, 2025. On that day, it filed the Motion for Leave and an Opposition to the Motion for Default. This was fifty-six days after Plaintiff's registered agent was originally served with the summons and Complaint and thirty-seven days after it was served with the Motion for Default.

Both papers filed by Defendant spend little time discussing why no responsive pleadings were filed in a timely manner. Defendant's Motion for Leave states as follows:

Last week, [*i.e.*, September 29 through October 3, 2025,] Step 1 received a copy of Plaintiff's Motion for Default Judgment and Notice of hearing regarding same scheduled for October 17, 2025, which was Step 1's first notification of the instant action as Step 1 does not recall receiving the summons and complaint from its Virginia resident agent.

Defendant's Opposition to the Motion for Default similarly states that Defendant "does not recall receiving the summons and complaint." However, both papers admit that Defendant's registered agent was served July 24, 2025, and neither paper contends that the summons and Complaint were not delivered by the registered agent to Defendant in a timely manner.

#### ANALYSIS

The issue of whether to grant Defendant relief from default is governed by Rule 3:19(b), which provides as follows:

Prior to the entry of judgment, for good cause shown the court may grant leave to

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<sup>1</sup> It is unclear whether Defendant was also served by certified mail at these same addresses. The certificate of service accompanying the Motion for Default indicates as much but Plaintiff's Motion for Default only states that service was by regular mail.

a defendant who is in default to file a late responsive pleading. Relief from default may be conditioned by the court upon such defendant reimbursing any extra costs and fees, including attorney fees, incurred by the plaintiff solely as a result of the delay in the filing of a responsive pleading by the defendant.

The question posed by the current motion is whether “good cause” has been shown such that the Court “may” exercise its discretion to allow the late filing of a responsive pleading. When evaluating this issue, the following non-exclusive criteria should be considered:

[C]ircumstances that support the exercise of discretion to extend the time for filing [a responsive pleading under Rule 3:19(b)] include lack of prejudice to the opposing party, the good faith of the moving party, the promptness of the moving party in responding to the opposing parties' decision to progress with the cause, the existence of a meritorious claim or substantial defense, the existence of legitimate extenuating circumstances, and justified belief that the suit has been abandoned or will be allowed to remain dormant on the docket.

*AME Fin. Corp. v. Kiritsis*, 281 Va. 384, 392 (2011).

In this case, the factor that weighs most heavily in the Court's mind is Defendant's lack of any reasonable explanation for what happened. The statement that Defendant “does not recall receiving the summons and complaint” is another way of saying Defendant was not paying attention to papers received from its registered agent. Beyond even attempting to explain what systems are in place to prevent this type of event and why the present situation may be an anomaly, Defendant does not address why or how it failed to act with alacrity in response to multiple additional mailings notifying it of a pending motion for default, makes no attempt to suggest that there were any “legitimate extenuating circumstances,” and does not allege that it had been misled by Defendant. The Court therefore finds there is no good cause present in this case. Indeed, if a party can escape a default judgment with no greater excuse or explanation other

than the claim that no one saw the papers sent by the registered agent, it is unclear how a party could ever be in default.<sup>2</sup>

At the hearing of this matter on November 14, 2025, counsel supplemented the basis for good cause by stating that her client may have thought the papers were related to a case in Ohio between the same parties and that no action on its part was required. However, even cursory review of the process should have caused a degree of diligence in the form of an inquiry by the client to its counsel. It does not appear this happened. Alternatively, counsel stated that because her client had been in other litigation with Plaintiff and the lawyers for each side were acquainted with one another, professionalism required Plaintiff's counsel to alert Defendant's counsel of the new lawsuit.

This Court expects counsel to always behave in a professional manner. Professionalism is vital to the organized Bar, and an organized Bar is vital to the administration of justice. However, the Court cannot find that professionalism requires attorneys to do other than behave civilly and in accordance with existing requirements of the Rules of the Supreme Court of Virginia. While attorneys must follow all applicable ethical and legal requirements, and while they may choose to go above and beyond those requirements, there cannot be fault in cleanly hewing to procedures established by law, and the Court does not find that Defendant's counsel acted inappropriately.

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<sup>2</sup> The Court has considered other factors but finds that the foregoing analysis is dispositive on the facts of this case. For example, nothing in the papers tendered by Defendant suggests it has a meritorious defense; *i.e.*, a colorable, litigable defense that could be accepted by a trier of fact. At the hearing of this matter, counsel for Defendant stated that the meritorious defense is based upon a "pay-when-paid" clause. While such clauses are illegal in Virginia construction contracts as a general matter, *see* VA. CODE § 11-4.6, it remains unclear to the Court whether the "pay-when-paid" prohibition would apply here. Regardless, Defendant did not make a showing sufficient to counterbalance its lack of diligence.

ORDER

As a result of the foregoing and having considered the equities of the case and the competing policy considerations at hand, the Motion for Leave is DENIED. It follows that there is no reason to further defer the entry of a default judgment, and thus counsel for Plaintiff is directed to prepare an Order for Default Judgment to be presented to the undersigned for entry no later than December 12, 2025.<sup>3</sup>

November 25, 2025  
Fairfax County, Virginia



Timothy J. McEvoy  
Circuit Court Judge

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<sup>3</sup> Even in cases of default, a trial court must determine that a Complaint states a colorable claim before a default judgment may be entered. *Landcraft Co. v. Kincaid*, 220 Va. 865, 870 (1980). “The foregoing principle stems from the proposition that courts may not properly on their own accord set themselves in motion. They have no power to adjudicate issues which are not presented by the parties in their pleadings unless the parties voluntarily try an issue beyond the pleadings. Such a judgment beyond the issue is not merely irregular, it is extrajudicial and invalid.” *Id.* The Court concludes that the Complaint in this case states a claim.