UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In re:

ANNA M. CHRISTENSON, *Debtor(s)*	:	Case No. 04-25372T
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ANNA M. CHRISTENSON, *Plaintiff(s)*	:	
	:	
v.		Adv. No. 04-2439
	:	
CLIFTON GOWING, *d/b/a* Y/C SERVICES, *Defendant(s)*	:	
	:	

ORDER

AND NOW, this 26th day of July, 2005, upon consideration of the motion for default judgment filed by Plaintiff/Debtor, Anna Christenson ("Debtor"), against Defendant, Clifton Gowing d/b/a Y/C Services ("Gowing"), and after a hearing with notice,[1] it is hereby ORDERED

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1. Gowing was the only witness who testified at the hearing on Debtor's motion. The findings of fact which follow are based on: (i) his testimony; and (ii) the docket and documents filed in this adversary proceeding of which both parties agreed the court could take judicial notice.

Debtor's minivan was in need of repair. Debtor and her son, Paul Miles, who has a business relationship with Gowing, took the minivan to Gowing's garage whereupon Miles asked Gowing to repair the minivan for a reduced price as a favor to him. Gowing made the repairs to the minivan for $1,200.00. On October 11, 2004, Debtor filed her Chapter 13 petition. On that date, $486.52 was owed to Gowing by Debtor for the repair of Debtor's minvan and Gowing still had possession of the minivan.

On October 11 or 12, 2004, Debtor's son, Paul Miles, delivered a copy of Debtor's bankruptcy petition to Gowing. Miles told Gowing to "consider himself served" and advised him to get himself an attorney. Miles told Gowing that he would take the minivan with him at that time or that Gowing could pull

that:

1. The Motion is DENIED.[2]

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the minivan out and Miles would pick it up later. Gowing informed Miles that he would not release the minivan until the repair bill was paid in full.

On October 12, 2004, Debtor's counsel called Gowing. During their telephone conversation, Debtor's counsel asked Gowing to release Debtor's minivan. (Gowing admitted this fact immediately prior to the close of his testimony. In doing so, he directly contradicted his earlier testimony that Debtor's counsel never requested him to return the minivan to debtor). Gowing did not comply. He believed that he had a mechanic's lien on the vehicle and that he had the right to retain the vehicle until the repair bill was paid in full.

On November 17, 2004, Debtor commenced this adversary proceeding by filing her complaint seeking turnover of her minivan, an award of attorneys' fees and costs, and punitive damages. Miles served the complaint and summons on Gowing. Observing that the complaint was not signed by Debtor's counsel (because it had been filed electronically) and being suspicious of Miles because of their past business dealings, Gowing concluded that the complaint had not been filed. Gowing made no attempt to contact the Clerk's Office of this Court or Gowing's attorney to verify his conclusion.

On December 23, 2005, Debtor filed a motion for default judgment. On January 7, 2005, this Court granted Debtor's motion for default judgment and ordered Gowing to turnover Debtor's minivan within fourteen (14) days. When Gowing received this Order, he contacted his counsel. On January 21, 2005, he timely returned possession of the minivan to Debtor in compliance with this Court's January 7, 2005 Order.

Gowing subsequently filed a motion to set aside the default judgment. We granted Gowing's motion by Order entered on March 22, 2005, finding that: (i) Debtor had failed to provide Gowing with the proper written notice of her motion as required by the Bankruptcy Rules; and (ii) no hearing had been held before the motion was granted. In the Order granting Gowing's motion, we scheduled the hearing on Debtor's motion for default judgment.

2. A motion for default judgment is addressed to the court's discretion. Hritz v. Woma Corp., 732 F.2d 1178, 1180 (3d Cir. 1984). As a result, a "movant is not entitled to a default judgment as of right, 'even when the defendant is technically in default.'" Spurio v. Choice Security Systems, Inc., 880 F. Supp. 402 (E.D. Pa. 1995) (*quoting* 10 Charles A. Wright, Arthur R. Miller & Mary K. Kane, *Federal Practice and Procedure*, §2685 (1983)). Courts disfavor motions for default judgments, preferring to decide cases on the merits. United States v. $55,518.05 in U.S. Currency, 728 F.2d 192, 195 (3d Cir. 1984). In this circuit, the following three factors govern the disposition of a motion for a default judgment: (1) whether the plaintiff will be prejudiced if the default is denied; (ii) whether the defendant has a meritorious defense; and (iii) whether the default was the product of defendant's culpable conduct. Spurio v. Choice Security Systems, Inc., 880 F. Supp. 402, 404 (E.D. Pa. 1995) (*citing* United States v. $55,518.05 in U.S. Currency, 728 F.2d 192, 195 (3d Cir. 1984)).

Since Gowing returned the minivan to Debtor in compliance with this Court's January 7, 2005 Order, Debtor has had possession of the vehicle since January 21, 2005. Consequently, if we deny Debtor's motion for default judgment, it will not prejudice Debtor by depriving her of possession of the minivan. Rather, the

2. Gowing shall file and serve an answer or other permissible response to Debtor's complaint within twenty (20) days of the date of this Order.

Reading, PA

THOMAS M. TWARDOWSKI
United States Bankruptcy Judge

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only prejudice that Debtor will suffer as a result of a denial of her motion is a delay in the resolution of this matter. This prejudice is insufficient to support granting Debtor's motion considering that Debtor also contributed to a delay in this proceeding by failing to provide proper notice to Gowing of her motion for default judgment.

Furthermore, even if Gowing had filed a timely answer to Debtor's complaint, it is highly possible that this proceeding would remain unresolved as of this date because Gowing has a potentially meritorious defense to the action. While Gowing incorrectly assumed before he sought legal counsel that he had a mechanic's lien on Debtor's vehicle, there is authority which supports his assertion that he has a repairperson's lien and for that reason, was entitled to retain possession of Debtor's minivan until his repair bill was paid in full. See Williamsport National Bank v. Shrey, 417 Pa. Super. 563, 570, 612 A.2d 1081, 1085 (1992) (ruling that, by performing repairs on a boat, appellant acquired a common law possessory lien in the boat and that the lien took priority over the security interest of the lender); Cernica v. Wagner's Wheel Alignment, 27 Pa. C. & D.3d 678, 680 (1983) ("There is no doubt that defendant by repairing the vehicle pursuant to plaintiff's request had the right to exercise an artisan's lien against it for the charges."); see also Northrup v. Ben Thompson Enterprises (In re Northrup), 220 B.R. 855 (Bankr. E.D. Pa. 1998) (discussing repair person's lien). Moreover, there is authority for his contention that he did not violate the automatic stay by exercising his right to possession of the vehicle. See Boggan v. Hoff Ford, Inc. (In re Boggan), 1999 WL 33490218, at *2 (Bankr. D. Idaho Nov. 30, 1999) ("Plaintiff has provided no direct authority which establishes that a statutory lien creditor, whose lien is dependent on possession, violates the automatic stay unless it unconditionally surrenders the property); Eaton v. River City Body Shop (In re Eaton), 220 B.R. 629 (Bankr. E.D. Ark. 1998) (ruling that no violation of the automatic stay occurred by vehicle repairman's retention of vehicle since it was entitled to a lien in the vehicle to the extent of its expense in repairing the vehicle).

Lastly, while this court strongly disapproves of Gowing's decision not take action to ascertain whether the complaint had been filed, we believe the entry of a default judgment would be "too draconion a remedy." National Union Fire Insurance Company v. Main (In re Main), 111 B.R. 535, 539-40 (Bankr. W.D. Pa. 1990). After receiving this Court's Order granting the default judgment and ordering him to turnover the minivan, Gowing contacted his attorney and returned the minivan to Debtor as required by the Order. This conduct shows his regard for the law and this Court. Consequently, we conclude that his inaction after receiving the complaint was the result of his disbelief, based on his past dealings with Miles, that it had not been filed. While Gowing may have acted unreasonably in failing to verify whether his disbelief was well-founded, his conduct does not rise to the level warranting the sanction of a default judgment.