

**COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF THE TRIAL COURT**

HAMPDEN, SS.

**HAMPDEN SUPERIOR COURT
CIVIL ACTION: 1879CV344**

**RIAN WATERS,
Plaintiff,**

v.

AIDAN KEARNEY, et al.

DEFENDANTS' MEMORANDUM IN SUPPORT OF THEIR MOTION TO SET ASIDE DEFAULT

In June of 2024, Judgment was vacated by the Appeals Court. After receiving notice of the same, Plaintiff then filed, within one month:

1. An "Emergency Motion for Preliminary Injunction and Consolidation With Trial on the Merits";
2. An "Emergency Motion for a Hearing on a Preliminary Injunction or Ultimatum to Voluntarily Dismiss";
3. A "Motion for Reconsideration and to Correct the Court's Misrepresentation";

None of these, of course, were received by Defendant Kearney (individually or in his capacity with any of the Turtleboy Defendants). Nor was the notice of status conference, which was set for January 29, 2025. Thus, when Mr. Kearney failed to appear to a hearing that he did not know about, Plaintiff then moved for Default, Default Judgment, and attempted to schedule a hearing on the same. Defendant Kearney promptly notified

counsel, who filed an appearance and is now seeking to remove default so that the case can proceed.

ARGUMENT

Mass. R. Civ. P. 55(c) states that for “good cause shown, the court may set aside an entry of default and, if a judgment has been entered, may likewise set it aside in accordance with Rule 60(b).” Judgment here has yet to be entered. The Court has broad discretion in these matters, and any doubts should generally be resolved in favor of a trial on the merits. See: *Greenleaf v. Mass. Bay Transp. Auth.*, 22 Mass. App. Ct. 426 (1986); *Smith and Zobel*, 8 Mass. Prac. § 55.8. The good cause standard is less stringent than excusable neglect (which lack of notice would meet, regardless). *Buffum v. Town of Rockport*, 36 Mass. App. Ct. 377 (1994).

Further, Defendant’s conduct supports setting aside default, based on the factors set forth in *Berube v. McKesson Wine & Spirits Co.*, 7 Mass. App. Ct. 426 (1979). First, Defendant acted promptly by obtaining and notifying his counsel of the default when he discovered it was entered. Second, he has attached an affidavit regarding his moving from his prior residence, and the fact that he did not receive notice of the status conference or of Plaintiff’s Motions¹. Plaintiff’s failure to appear happened before trial. Plaintiff did not consciously choose to neglect the hearing. Plaintiff will not be prejudiced, as he has been

¹ The Court should also know that Plaintiff has sued Mr. Kearney in Federal Courts in Massachusetts and California, attempted to file private criminal charges against Mr. Kearney in the state courts, and has had dismissal of this case overturned twice. The Appeals Court made mention of the “flurry” of filings by Plaintiff in this case alone. It has been more than confusing for the Defendant (and this Court) to try to make sense of what Plaintiff is seeking, and that is when he is actually receiving notice of the same. Counsel represents that in the very short time since filing an appearance, Plaintiff has stated his intent to file for Summary Judgment and has served a Motion for Sanctions.

attempting to sue Defendant for nearly seven years, and this will not cause any further delay. Defendant did not have a legal representative, but again, did not receive notice of the hearing. Despite the dismissals being overturned, Defendant has good and meritorious defenses to Plaintiff's claims, and is likely to succeed at trial, or summary judgment, if this Court allows the subsequent Motion to Amend Tracking Order.

CONCLUSION

Wherefore, because Defendant did not receive notice of the hearing, and because it would not prejudice the Plaintiff, Defendants ask this Court to ALLOW their motion and set aside the entry of default.

Defendant, by:

_____/s/ Ryan P. McLane_____
Ryan P. McLane, Esq.
BBO #697464
269 South Westfield St.
Feeding Hills, MA 01030
413.789.7771
ryan@mclanelaw.com