

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

RIAN WATERS,
Plaintiff

vs.

AIDAN KEARNEY, Et al
Defendants

)
)
) **Superior Court Rule 9D**
) **RECONSIDERATION**
)
)

PLAINTIFF’S MOTION TO RECONSIDER VACATING DEFAULT

NOW COMES the Plaintiff, Rian Waters, and respectfully moves this Honorable Court, pursuant to **Superior Court Rule 9D**, to reconsider its ruling vacating default on the grounds that the ruling contains particular and demonstrable errors of law.

I. INTRODUCTION

Plaintiff moves for reconsideration of the Court’s ruling vacating default against Defendant Aidan Kearney, as the ruling contains demonstrable legal errors and misapprehensions of fact. Under Mass. R. Civ. P. 55(c), vacating default requires both (1) good cause and (2) a meritorious defense. Massachusetts courts have consistently held that both elements are mandatory, not discretionary.

However, the Court vacated the default without requiring Defendant to present a meritorious defense, contradicting controlling case law, including *Vicinity v.*

Langis, 92 Mass. App. Ct. 815, 819 (2017). Additionally, the Court overlooked key evidence of Defendant's willful evasion of service, history of procedural misconduct, and the resulting prejudice to Plaintiff. These factors weigh against setting aside the default under established Massachusetts precedent.

Furthermore, reconsideration is warranted due to newly discovered evidence. Defendant's reply brief contained false and misleading statements that Plaintiff had no meaningful opportunity to rebut before the Court's ruling. Defendant misrepresented both Plaintiff's legal arguments and the factual record, further demonstrating a pattern of bad faith. Because the ruling relied, in part, on these misrepresentations, reconsideration is necessary to correct plain errors and ensure the integrity of the proceedings.

II. LEGAL STANDARD FOR RECONSIDERATION

Under **Superior Court Rule 9D**, a Motion for Reconsideration is appropriate when there is: "a particular and demonstrable error in the original ruling or decision."

III. PARTICULAR AND DEMONSTRABLE ERRORS

1. The Court Vacated Default Without a Meritorious Defense (Mandatory Requirement)

- **Error:** The court vacated the default judgment without requiring Kearney to present a meritorious defense, which is a mandatory requirement under Mass. R. Civ. P. 55(c). **The failure to require a meritorious defense is not a discretionary oversight—it is a plain legal error that contravenes well-established precedent. (p. 1-3) of Opposition Brief**
- **Case Law:**
 - **Vicinity v. Langis, 92 Mass. App. Ct. 815, 819 (2017)** (*“Good cause” requires both a valid excuse and a meritorious defense.*)
 - **Johnny's Oil Co. v. Eldayha, 82 Mass. App. Ct. 705, 708 (2012)** (*Courts deny motions to vacate that rely solely on conclusory statements.*) See also, *Cicchese v. Tape Time Corp.*, 28 Mass. App. Ct. 72, 74–75, 546 N.E.2d 384, 386 (1989)

2. The Court Ignored That Kearney Deliberately Refused Service & Actively Evaded Notice

- **Error:** The court found that Kearney *“did not receive notice of the status conference or any of Plaintiff’s filings,”* and that *“As soon as Defendant did receive notice of the status of the case, and that he was in default, he promptly notified his counsel, who filed an appearance and requested time to file this motion.”*

- **Contrary Evidence Ignored by the Court:**

- In this case, Kearney made false accusations to excuse his failure to respond in 2018. (*Opposition p. 8, Exhibit D*)
- On June 27, 2022, Kearney explicitly asked Plaintiff not to mail him anything and refused to agree to email service. *Opposition pg 5 Exhibit B*
- Despite later claiming he thought the case was closed, Kearney received and discussed the Appeals Court briefs with Plaintiff. *Opposition pg 5 Exhibit A*
- On December 13, 2024, Kearney explicitly refused service again, stating he would not respond and again instructing Plaintiff not to mail him anything. *Opposition 6-7 (Plaintiff's Aff. at 3) (Docket # 122)*
- After discussing the preliminary injunction motion in December 2024, Kearney blocked Plaintiff's email and phone, further preventing communication. (*Kearney's affidavit at 7*)
- Kearney, as the registered agent for Worcester Digital Marketing, was legally required to maintain an accurate address for service; notice was sent to his registered place of business, an address Kearney still owns. *Opposition pg 7 Exhibit C (Plaintiff's Affidavit at 5)*

- **Legal Significance:**

Kearney had prior knowledge of proceedings but ignored them. His eventual action wasn't prompt—it was delayed by his own avoidance. Courts do not tolerate strategic evasion of service. *Wang v. Niakaros*, 67 Mass. App. Ct. 166, 171 (2006) (Courts may ignore “technical deficiencies” when a defendant has actual notice but evades service.) See also *Greenleaf v. MBTA*, 22 Mass. App. Ct. 426, 430 (1986) (*Pattern of defaulting is a relevant consideration when determining good cause.*)

Kearney's conduct was internally inconsistent with his claim of ignorance. As held in ***Anderson v. Bessemer City, N.C.*, 470 U.S. 564, 575 (1985)**:

"Documents or objective evidence may contradict a witness's story; or the story itself may be so internally inconsistent or implausible on its face that a reasonable factfinder would not credit it." (p. 4-8) of Opposition Brief

3. The Court Failed to Consider Prejudice to Plaintiff and Public Interest Factors

- **Error:** The Court failed to reasonably consider relevant **legal factors** such as **prejudice to Plaintiff, public interest concerns**, and good faith of the parties, all of which weigh against vacating default.

Reopening this matter rewards procedural gamesmanship, prolongs litigation, and imposes additional costs and burdens on Plaintiff, who has already suffered prejudice due to Defendant's misconduct. Emotional distress and harassment are

also relevant to prejudice—Plaintiff argues that setting aside the default would allow Kearney to continue harassment, which has already caused severe harm (Opposition, p. 2 & 10-11) *See Vicinity*, 822.; “[T]he prejudice factor may be of particular relevance and importance” *Care One Mgmt. v. Brown*, 98 Mass. App. Ct. 589, 601 (2020); *In re Zeitler*, 221 B.R. 934, 938 (B.A.P. 1st Cir. 1998) (“*Other factors that might be considered include the proffered explanation for the default, the good faith of the parties, and public interest implications.*”) (p. 8-12) of Opposition Brief

IV. NEWLY DISCOVERED EVIDENCE PLAIN ERROR

Additionally, reconsideration is warranted because Defendant’s misrepresentations in his Reply brief constitute newly discovered evidence that Plaintiff could not have practically addressed. Defendant served his opposition on a Thursday afternoon, and the Court ruled Friday morning, leaving Plaintiff only a few business hours to file a motion for leave to respond—a task even an attorney would struggle to accomplish. Because Plaintiff was deprived of the ability to rebut these misrepresentations in a meaningful way, this evidence qualifies as **newly discovered under Rule 9D(1)**. Notably he also misrepresented our emails.

False or Misleading Statements in Defendant’s Reply Brief

1. **Claim:** "Plaintiff's Opposition/Cross Motion Memorandum does not meaningfully contest any of the legitimate reasons Defendant gave to set aside default."

False – Plaintiff explicitly contests these reasons.

Plaintiff argues that the defendant's failure to appear was willful and deliberate, citing evidence that Kearney blocked communications, refused service, and admitted ignoring the appeal (Opposition, p. 4-6).

Plaintiff also cites case law requiring a meritorious defense to vacate default and argues that Kearney failed to provide one (Opposition, p. 2-3).

2. **Claim:** "Plaintiff raises irrelevant allegations, including: Defendant's Alleged Prior Misconduct in Unrelated Cases, Claims of Emotional Distress and Harassment, Defendant's Business Operations, Criminal Proceedings & Bail Conditions."

False – These issues are relevant to the motion to vacate default.

Plaintiff argues that the defendant's prior defaults and procedural evasion are part of a pattern of misconduct, making the default here intentional rather than an innocent mistake (Opposition, p. 7-9).

Emotional distress and harassment are relevant to prejudice (see supra, pp. 5-6).

The opposition argued that Kearney lied about his business being defunct to excuse his failure to update his registered address, and that notice was sent to Defendant Worcester Digital Marketing LLC's place of business. See Opposition pg 7 & 11-3. *Sykes v. Dish Network*, 2005 Mass. App. Div. 58, 59 (Mass. Dist. Ct. App. 2005) Kearney's failure to follow corporate rules is not an excuse for evasion.

3. Claim: "Plaintiff has had his injunctions denied three times before, surrounding the same alleged conduct."

Misleading – Plaintiff states that previous injunctions were denied under different circumstances for different misconduct.

Plaintiff argues that **prior denials did not have any factual or legal support.** (Opposition, p. 9). Now that the Defendant opened the door to this issue, in 2019 Mulqueen denied an injunction with a conclusory determination of likelihood of success. The Appeals court decided her determination was wrong because “[a]n imputation of crime is defamatory per se.” *Waters v. Kearney*, 100 Mass. App. Ct. 1105, (Mass. App. Ct. 2021).

In June 2022, a clerk reviewed my unopposed motion for sanctions and issued a witness subpoena for Kearney to testify at the motion hearing. (Docket 99 & 102) After having an ex parte conversation with Kearney, Judge Callan cancelled the witness subpoena and denied the injunction motion without a factual

or legal reason. A couple months later, Callan denied the sanctions motion without reason, and dismissed the case under inherent power. The Appeals Court decided that he was factually “incorrect” *Waters v. Kearney*, No. 22-P-1105, 4 (Mass. App. Ct. May. 28, 2024), and that he made three legal errors when dismissing the case. (Two related to damages and one regarding use of inherent power)

Given the appeals court has determined that likelihood of success was repeatedly incorrectly decided, the frivolous opinions shouldn’t hold any weight. See Article XXIX of the Massachusetts Declaration of Rights.

Defendant's misrepresentations detract from the value of any legitimate arguments presented. As held in *Avery v. Steele*, 414 Mass. 450, 456 (1993), (“Inappropriate argument and unsubstantiated statements in a brief may infect an otherwise meritorious appeal so pervasively as to make it frivolous.”) “Good faith includes, among other things, an absence of design to defraud or to seek an unconscionable advantage.” *Van Christo Advertising, Inc. v. M/A-COM/LCS*, 426 Mass. 410, 416 (Mass. 1998)

Furthermore, the Court’s acceptance of **overt fraud** in Defendant’s filing constitutes **plain error**, which could damage the Court’s integrity. See *ABF Freight System, Inc. v. N.L.R.B.*, 510 U.S. 317, 323 (1994) (“False testimony in a formal proceeding is intolerable.”)

The consistent lack of fair pretrial rulings and the absence of protection for witnesses raise serious concerns about my ability to receive a fair trial. Given the pattern of judicial errors and misconduct, proceeding under these conditions would be unjust—not only to me but also to those impacted by this case.

V. REQUESTED RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

1. Vacate its order granting Defendant's Motion to Set Aside Default and reinstate the default, or schedule a hearing to discuss conditions.
2. If the Court declines to reinstate default, Plaintiff requests an immediate stay for interlocutory appeal, as the ruling involves substantial legal errors warranting appellate review.

Respectfully submitted,

/s/ Rian Waters Watersrian@gmail.com (530) 739-8951

Dated: March 27th 2025

Certificate Of Service

I, Rian Waters, hereby certify that I will today March 27th 2025 serve a copy of the **PLAINTIFF'S MOTION TO RECONSIDER VACATING DEFAULT** upon Kearney by email at ryan@mclanelaw.com. Ryan agreed to accept email service at 2/26/25 hearing.

/S/ Rian Waters

(530)739-8951 Watersrian@gmail.com Dated: March 27th 2025