

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT

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RIAN WATERS

v.

AIDAN KEARNEY, ET AL.

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Docket No.  
1879CV00344

BEFORE THE HONORABLE JANE E. MULQUEEN  
JANUARY 9, 2019

APPEARANCES:

For the plaintiff:

BY: Rian Waters, Pro Se

For the defendant, Aidan Kearney, et al.:

KC Law

30 Court Street, Suite 1

Westfield, Massachusetts 01085

BY: Kevin Chrisanthopoulos, Esq.

Also present: Samantha Cardin, Pro Se

Springfield, Massachusetts  
Room 7

Christine D. Blankenship  
Court Reporter/Transcriber

I N D E X

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Proceedings

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1 (Court in session.)

2 THE CLERK: Next matter before the Court, Your Honor,  
3 is Waters versus Kearney, docket 2018-344.

4 Mr. Waters, identify yourself.

5 MR. WATERS: Rian Waters for the plaintiff.

6 THE COURT: Good afternoon.

7 MR. CHRISANTHOPOULOS: Good afternoon, Judge, Kevin  
8 Chrisanthopoulos for the three defendants aside from Ms.  
9 Cardin.

10 MS. CARDIN: And Samantha Cardin.

11 THE COURT: All right. So initially, I had plaintiff's  
12 motion for default judgment, and then we have a motion for  
13 reconsideration, plaintiff's motion to reconsider  
14 defendants' motion to remove default and request for filing  
15 a late answer. And then yesterday I received plaintiff's  
16 emergency motion to convert default judgment hearing into a  
17 temporary restraining order hearing.

18 MR. WATERS: On the reconsideration motion, wouldn't  
19 that go back to Judge Constance Sweeney?

20 THE COURT: Well, I'm just trying to figure out where  
21 we're at.

22 MR. CHRISANTHOPOULOS: So am I, Judge. The motion -- I  
23 don't have that.

24 THE COURT: You don't have that.

25 MR. CHRISANTHOPOULOS: Additionally, obviously, I'm not

1 representing her, but Ms. Cardin is here for the first time  
2 in this case and without speaking for her, I think she does  
3 have something to say about removing the default against  
4 her.

5 MR. WATERS: May I --

6 THE COURT: Hold on for a moment. First, the motion  
7 that you filed yesterday, plaintiff's emergency motion to  
8 convert default judgment hearing into a temporary  
9 restraining order hearing.

10 MR. WATERS: Yeah.

11 THE COURT: You did not serve.

12 MR. WATERS: Samantha, she's in default.

13 MR. CHRISANTHOPOULOS: Judge, there's also a short  
14 order notice. There's a hearing next Tuesday, so I'm not  
15 sure if he's trying to convert that into today, but I'm not  
16 prepared for that.

17 MR. WATERS: No, the harassment that I've been getting  
18 from the defendants that he represents has been so severe  
19 that I am not able to properly litigate. I mean, I've  
20 gotten literal death threats, several of them I list off  
21 some of them off my phone.

22 THE COURT: What is the matter that's scheduled for  
23 hearing next week, Madame Clerk?

24 THE CLERK: I'm looking for it right now.

25 MR. WATERS: It's a preliminary injunction.

1 THE CLERK: That would be correct.

2 MR. WATERS: And so for today what I was hoping for  
3 would be if not a temporary restraining order like a 258E  
4 which certainly meets all the requirements that I can go  
5 over.

6 THE COURT: Wasn't there already a request for a  
7 temporary restraining order that was denied?

8 THE CLERK: It was denied?

9 THE COURT: I'm sorry, I'm not familiar with the entire  
10 docket, so I apologize. I'm a little behind the eight ball  
11 here. So next week is a motion for a preliminary  
12 injunction, and you're asking that the Court issue a  
13 temporary restraining order today ahead of the preliminary  
14 injunction that you're seeking next week.

15 MR. WATERS: So that I can properly represent myself.

16 THE COURT: And you are unprepared to --

17 MR. CHRISANTHOPOULOS: The first I'm hearing of it.

18 MR. WATERS: It's allowed to be done, I mean, even ex  
19 parte.

20 THE COURT: I understand that but we're --

21 MR. WATERS: And he did get the motion for the  
22 preliminary injunction which pretty much highlights all the  
23 same stuff that's in the TRO.

24 MR. CHRISANTHOPOULOS: Judge, that could have been  
25 addressed when he filed that motion and the Court issued a

1 short order notice. They scheduled it for next Tuesday,  
2 and we were prepared at that time to move forward.

3 THE COURT: Bear with me for one moment.

4 Defendants' motion to remove default which was allowed  
5 was in regard to Aidan Kearny, Worcester Digital Marketing  
6 LLC, Turtle Boy Enterprises LLC, correct?

7 MR. CHRISANTHOPOULOS: That's correct.

8 THE COURT: And that's what you're moving to  
9 reconsider?

10 MR. WATERS: Not at this moment, though. That's before  
11 Honorable Constance Sweeney.

12 THE COURT: All right. Then I will set that aside. And  
13 today there is plaintiff's motion for default judgment that  
14 you're asking for Samantha Cardin who was defaulted in  
15 September of 2018, and you're moving for damages to be  
16 assessed by the Court and judgment be entered against the  
17 defendant, but the defendant has now appeared today for the  
18 first time in this litigation. So I will hear from you.

19 MS. CARDIN: I want to get the default removed or  
20 dismissed. I didn't know that -- I didn't know this was  
21 real. I thought it was, like, I don't know I thought it  
22 was just another way to continue to abuse and harass me.  
23 So I didn't move forward. I cannot afford a lawyer, he  
24 knows I cannot afford a lawyer, so I haven't been able to  
25 do anything.

1 THE COURT: Okay. All right. So you were defaulted in  
2 this case back in September because you failed to answer  
3 the complaint or defend yourself in any way. So when you  
4 say you didn't think this was real, what do you mean?

5 MS. CARDIN: I didn't think I was actually being sued  
6 for.

7 THE COURT: You got paperwork.

8 MS. CARDIN: I did get paperwork. I didn't know -- I  
9 just didn't do anything with it because I thought it was  
10 just going to go away. I thought it was another way to  
11 continue to abuse and harass me.

12 THE COURT: How did you find out it was real? What  
13 precipitated your appearance here today?

14 MS. CARDIN: My neighbor at my old address called me  
15 and said, "Hey, there's a piece of mail here that looks  
16 really important," on Christmas Eve, and I was like, "Hey,  
17 can you bring it over?" And when I opened it was to come  
18 here, and I was purposefully served the wrong address, so I  
19 would've missed it again had my neighbor not told me.

20 THE COURT: Did you want to be heard?

21 MR. WATERS: What?

22 THE COURT: Do you want to say something about her  
23 request that the Court remove the default?

24 MR. WATERS: Yeah, I mean, well, it actually is  
25 somewhat irrelevant anyways because the reality is the

1 reason why I put her on the lawsuit is because I was  
2 advised that she was a necessary party. The other  
3 defendants have since said that they don't think she is a  
4 necessary party, so, honestly, I'm all for even just  
5 dismissing her part of it.

6 So I mean, but as far as to her point, I do want to say  
7 that I did -- the rule was to serve the last known address.  
8 I did not know that she moved. I had a suspicion that she  
9 did, but I did not know for sure and I did send her an  
10 email with the 14 day notice that was necessary to make  
11 sure that she did get proper notice.

12 THE COURT: All right. But at this time, you are orally  
13 moving to dismiss her from the lawsuit.

14 MR. WATERS: Yeah, I'm fine with that.

15 THE COURT: Any objection?

16 MR. CHRISANTHOPOULOS: No objection.

17 THE COURT: Any objection?

18 MS. CARDIN: No.

19 THE COURT: So plaintiff's motion for default judgment  
20 against Samantha Cardin.

21 MR. WATERS: Denied.

22 THE COURT: Is I guess you can withdraw it. So I will  
23 say motion withdrawn. Ms. Cardin will be dismissed from  
24 the lawsuit.

25 MS. CARDIN: Thank you.

1 THE COURT: And because that motion was just oral made  
2 in court, I would ask -- actually I would order that you  
3 file a stipulation of dismissal.

4 MR. WATERS: Okay.

5 THE COURT: All right. Motion is withdrawn. So that is  
6 taken care of. The motion for reconsideration will go back  
7 in front of Justice Sweeney and all that we have left right  
8 now to deal with is the motion for temporary restraining  
9 order.

10 Ms. Cardin, you are free to go. Thank you very much.

11 So the preliminary injunction hearing is scheduled for  
12 next week. When you file that motion for preliminary  
13 injunction, did you request?

14 MR. WATERS: A temporary restraining order, I did. I  
15 did not list it as ex parte, though.

16 THE COURT: Did we find that, Madame Clerk?

17 And so what has changed between then and now that  
18 you're seeking a temporary restraining order today?

19 MR. WATERS: They have published at least -- at least  
20 three blogs and have at least six, seven Facebook posts per  
21 each account that they have, and I've gotten death threats.  
22 I mean, if you would like I could read out a few of them.  
23 I tried to prepare but I had a problem with technology and  
24 emailing them to myself, it just didn't work right. But,  
25 yeah, no, I received plenty of death threats, and I mean

1 it's really hard to try to work or do any work when it's  
2 just overwhelmed with comments of harassment. And there is  
3 law like the -- I wish I was a little more prepared. Like  
4 the Constitution does not protect truth threats and truth  
5 threats don't have to be directly --

6 THE COURT: Were these, I'm sorry to interrupt you, I  
7 don't mean to interrupt you, I'm sorry to jump in. Were  
8 these threats did these occur between January 2 and today?

9 MR. WATERS: Yes.

10 THE COURT: What was the basis for your request for a  
11 temporary restraining order back on January 2?

12 MR. WATERS: Well, it was defendant Aidan Kearney, he  
13 published a book that -- well, they continually have done  
14 some sort of intimidation before every important event with  
15 this case. And so, like, right before the default judgment  
16 hearing, Aidan Kearney published a book that accused me of  
17 several criminal acts, and he also he used incorrect  
18 misrepresented parts of the judicial proceeding to make me  
19 look more guilty. And he's also he said on his live show,  
20 which is recorded online, he said he was going to kill me  
21 with words among other things, which I mean this particular  
22 defendants they operate a blog that's, like, a publishing  
23 device, and on a daily basis they try to destroy lives and  
24 it's like their goal. They have this Turtle Boy Graveyard  
25 which is, like, all the lives that they've like ruined and

1 they put in, so it's just, yeah, his threats if done by a  
2 normal person would not be that threatening, done by him is  
3 extremely threatening and I mean honestly --

4 THE COURT: When you say your life was threatened.

5 MR. WATERS: Yes, not so much by him at that time,  
6 although there is also a Supreme Court decision that says  
7 they're not allowed to launder their harassment through  
8 online websites. But, yeah, this one, "Rian Waters, you  
9 know, come on, pal, come on play tough guy with me, little  
10 boy. I want to see with your man. I want to choke you  
11 out, wake you up, kick you to sleep again. Come on abuse  
12 me, mother fucker. I'll be your huckleberry boy. Come and  
13 get pussy."

14 THE COURT: And who was that from?

15 MR. WATERS: That was Brett Kilburn which is actually  
16 the cohost on defendant Aidan Kearney's show.

17 THE COURT: But it's not from defendant Kearney. So I  
18 see from the record that the request for a temporary  
19 restraining order was denied back on the 2nd of January.  
20 The preliminary injunction hearing is scheduled for next  
21 week. I understand your situation, but I'm not hearing any  
22 actual threats. We are talking about protected speech  
23 here, there's issues. So I'm not going to issue a  
24 temporary restraining order, and we can fully argue and  
25 litigate this matter next week at the motion for a

1 preliminary injunction.

2 MR. WATERS: Okay.

3 MR. CHRISANTHOPOULOS: Judge, if I may. With regard to  
4 his motion for reconsideration, he's alleging that it used  
5 to be before Judge Sweeney. Since he filed that, he's  
6 filed a second amended complaint, which I think would  
7 essentially --

8 THE COURT: Negate the --

9 MR. CHRISANTHOPOULOS: Exactly, and I think you would  
10 have jurisdiction over that.

11 MR. WATERS: There is some claims, I don't have a case  
12 law in front of me, but there is -- and it does say default  
13 removal on some claims is not -- doesn't necessarily remove  
14 them on other claims. And several of the claims the  
15 default has not been removed, although I do believe it  
16 should be in front of Constance Sweeney. She's a lot more  
17 -- she knows the matter better.

18 THE COURT: So she considered your motion to remove  
19 default.

20 MR. WATERS: Yes.

21 THE COURT: Okay. But you subsequent to that filed an  
22 amended complaint.

23 MR. WATERS: Yes.

24 THE COURT: And then an answer was filed and --

25 MR. CHRISANTHOPOULOS: An answer is not due yet. We

1 intend to file a motion to dismiss.

2 THE COURT: Madame Clerk. So by review of the docket  
3 Judge Ricciardone allowed the motion to amend the complaint  
4 and by doing so did not indicate there was anything in  
5 regard to a reconsideration of the motion. So the second  
6 amended complaint I think eliminates the issue or the  
7 necessity for a motion for reconsideration, so I -- Judge  
8 Sweeney is not here, I am now in this session, I have  
9 jurisdiction of the case and will hear the matter fully  
10 next -- what date are coming back?

11 THE CLERK: Tuesday.

12 THE COURT: Tuesday, on next Tuesday. So I will  
13 endorse plaintiff's emergency motion to convert this into a  
14 temporary restraining order hearing, and I will also  
15 endorse the motion to reconsider as denied I guess. And  
16 then we will move on next Tuesday.

17 MR. CHRISANTHOPOULOS: Thank you, Your Honor.

18 THE COURT: And we will see you both next Tuesday.

19 MR. WATERS: You just said the reconsider was denied?

20 THE COURT: It's moot because of the second -- the  
21 amended complaint.

22 MR. WATERS: Okay.

23 MR. CHRISANTHOPOULOS: Thank you, Judge.

24 THE COURT: Thank you, all.

25 THE CLERK: Mr. Waters, please remember to file that

1 stipulation.

2 MR. WATERS: One more time?

3 THE CLERK: File the stipulation in the clerk's office,  
4 please.

5 MR. WATERS: Is tomorrow fine?

6 THE CLERK: That's fine.

7 THE COURT: Thank you.

8 (Court in recess.)

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