

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

_____)
RIAN WATERS,)
Plaintiff)
vs.)
AIDAN KEARNEY,)
WORCESTER DIGITAL MARKETING, LLC)
TURTLEBOY ENTERPRISES, LLC)
_____)

HAMPDEN COUNTY
SUPERIOR COURT
FILED
JAN 18 2019
[Signature]
CLERK OF COURTS

NOTICE OF REQUEST FOR CLARIFICATION

The Plaintiff is requesting the court to clarify if the motion that the Defendants served on January 17th 2019 will be treated as a motion for summary judgment, or if the attached Exhibit A will be excluded so it can be treated as a motion to dismiss. The motion says pursuant of Mass. R. Civ. P. 12(b)(6), but the Defendants motion includes an affidavit from a third party, who alleges facts that were not part of the pleadings.

"If, on any motion asserting the defense numbered (6), to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56. A motion, answer, or reply presenting the defense numbered (6) shall include a short, concise statement of the grounds on which such defense is based." Mass. R. Civ. P. 12 (B)

Additionally the Defendants did not follow Superior Court Rule 9C, and therefore the motion

should be denied. The Plaintiff has tried to initiate a conference in person, by phone, and email,

2/1/19 As the court will accept and consider the affidavits submitted by defendants in support of their Rule 12(b)(6) motion, constituting "matters outside the pleadings" the court will treat the motion as a motion for summary judgment under Rule 56. See Williams v. Episcopal Diocese of Mass., 436 Mass. 574, 577 n.2 (2002). Plaintiff has until March 14 to file further material and the matter is to be scheduled for a hearing on or before April 10, 2019.

this is what the court will consider

Mulquea, J. 38