

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV344

RIAN WATERS,
Plaintiff

vs.

AIDAN KEARNEY,

WORCESTER DIGITAL MARKETING, LLC

TURTLEBOY ENTERPRISES, LLC

SAMANTHA CARDIN,

JOHN DOES 1-10,
Defendants

HAMPDEN COUNTY
SUPERIOR COURT
FILED

DEC 14 2018

Laura S. Genelle
CLERK OF COURTS

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DEC 14 2018
LAURA S. GENELLE
CLERK OF COURT
HAMPDEN COUNTY

PLAINTIFF RIAN WATERS'S AMENDED MEMORANDUM IN SUPPORT OF HIS MOTION TO RECONSIDER DEFENDANTS MOTION TO REMOVE DEFAULT AND REQUEST FOR FILING A LATE ANSWER.

The Plaintiff, Rian Waters, moves this Honorable Court to reconsider the Defendants motion and hold a hearing to argue the merits of this motion. Alternatively the Plaintiff requests this court report this matter to the appeals court to allow an interlocutory appeal.

Factual History

Defendant Aidan Kearney (Mr. Kearney) wrote a book titled "I am Turtleboy." Mr. Kearney's book was published in November 2018, and it was not available for purchase until the week before the motion hearing. (Exhibit A ¶¶ 4&5) The book contains more defamatory statements directed at the Plaintiff, as well as a different explanation as to why the Defendants defaulted in this lawsuit, stating "I never responded to his complaint, which was a mistake, because I was intimidated by him (he murders dogs and beats women after all) and hoped it would go away

(since he had no lawyer)” (Exhibit A ¶ 2&3) On November 11th 2018 Mr. Kearney threatened the Plaintiff on his recorded online show, stating he was going to murder him with words. The Plaintiff has taken this threat very seriously (since Mr. Kearney has showed numerous times he can circumvent harassment laws with impunity) and has since avoided his residence.

ARGUMENT

1. The Plaintiff did not get a fair opportunity to be heard.

The defendants strategically threatened and defamed the Plaintiff the week before the motion hearing which impaired the Plaintiffs ability to litigate and prepare for the hearing. (Exhibit A ¶ 2-5) Rule 2.6 of the Code of Judicial Conduct allows “A judge may make reasonable efforts, consistent with the law,* to facilitate the ability of all litigants, including self-represented litigants, to be fairly heard.”

2. The following precedent case law that was cited in the Plaintiff’s brief was not considered.

“meritorious nature of defense to one claim of a multi-claim action does not justify removal of default on other claims” Cicchese v. Tape Time Corp., 28 Mass. App. Ct. 72, 76, 546 N.E.2d 384, 386, 1989 Mass. App. 658, *8 “Parties cannot, with impunity, ignore, flout, or circumvent the Rule 12(a)(1) twenty-day deadline for filing an answer.” Floyd v. Owens, 2009 Mass. App. Div. 219 Being distracted and attempting to settle is not a valid excuse to ignore the courts rules. see Kenney v. Rust, 17 Mass. App. Ct. 699, 702, 462 N.E.2d 333, 336, 1984 Mass. App. LEXIS 1428, *7 “A bare allegation or of merit will not suffice. There should be support in the form of affidavits or reference material” Carlson v. Silvia, 2002 Mass. App. Div. 190, 191, 75, *4-5

3. In previous defamation cases the Appellate Court has not considered this Court’s stated reason for removing the default.

The stated reason this Court removed the default was because defamation claims and co-claims require the defaults removal, and a trial on the merits. Although the Plaintiff was unable to find this requirement in statute or case law. In another defamation lawsuit, the Ceruolo v. Garcia, 92 Mass. App. Ct. 185, 188, 83 N.E.3d 179, 183, 2017 119, *5 court stated

“There is no mechanical formula for determining whether good cause exists to set aside the entry of default and courts may consider a host of relevant factors. The three typically considered are (1) whether the default was willful; (2) whether setting it aside would prejudice the adversary; and (3) whether a meritorious defense is presented. Courts may also consider other relevant factors, including (4) the nature of the defendant's explanation for the default; (5) the good faith of the parties; (6) the amount of money involved; and (7) the timing of the motion to set aside the entry of default.”

Based on our briefs the only factors that could be viewed in the Defendants favor are

(6) and (7). See also AYASH vs. DANA-FARBER INSTITUTE, 46 Mass. App. Ct. 384

4. Fraud, and Negligent Publishing, are actionable without the defamation claims.

Defendant Samantha Cardin has defaulted with Malicious Prosecution, Libel, and Loss of Consortium. Even after the allowed late answer, the Defendants still have not provided a nature to their defense to Fraud, and Loss of Consortium.

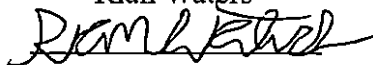
5. New evidence shows Mr. Kearney is not easily intimidated. (Exhibit A ¶ 6&7)

CONCLUSION

For the reasons set forth above, the Plaintiff respectfully requests that the Defendants Emergency Motion to remove the default, and request for leave to file answer late be reconsidered, and a new hearing be held to argue the merits of the motion.

Respectfully submitted,

Rian Waters



199 Allen St.

East Longmeadow, MA. 01028

(530)739-8951 Watersrian@gmail.com Dated: December 3, 2018

EXHIBIT A

COMMONWEALTH OF MASSACHUSETTS

HAMPDEN, SS.

SUPERIOR COURT
CIVIL ACTION NO. 1879CV00344

| | |
|----------------------------------|---|
| RIAN WATERS, |) |
| Plaintiff |) |
| vs. |) |
| |) |
| AIDAN KEARNEY, |) |
| |) |
| WORCESTER DIGITAL MARKETING, LLC |) |
| |) |
| TURTLEBOY ENTERPRISES, LLC |) |
| |) |
| SAMANTHA CARDIN, |) |
| |) |
| JOHN DOES 1-10, |) |
| Defendants |) |

AMENDED AFFIDAVIT OF RIAN WATERS

1. I am the Pro Se Plaintiff in the above captioned matter.
2. On or about November 11th Aidan Kearney threatened me on his online show that was recorded, and is available to watch on demand. Stating "I am going to fucking murder him with words, and we are going to bury him"
3. Once I became aware of Mr.Kearney's threat, I felt uncomfortable being inside my residence, and have since avoided it.
4. Aidan Kearney wrote a book titled "I am Turtleboy" and had it first published in November 2018. The book was not available for purchase until on or about November 13th 2018.
5. In Aidan Kearney's book " I am Turtleboy" he states a different reason for defaulting in the Plaintiff's lawsuit, and wrote several defamatory statements including but not limited to the following;
 - a. "I never responded to his complaint, which was a mistake, because I was intimidated by him (he murders dogs and beats women after all) and hoped it would go away (since he had no lawyer)"
 - b. "Everything she posted on Facebook was true." "I know this as a fact"
 - c. "According to the women he assaulted, Rian Waters sold drugs in California"

6. In Aidan Kearney's book he also wrote the following;
 - a. "The person on the other end of the call told me he was going to kill my family and rape my wife. By this point stuff like this didn't faze me."
7. Aidan Kearney recently stated on his recorded online show that he likes and respects Kevin Lynch, a man that Mr. Kearney knows is a murderer.

Signed under the pains and penalties of perjury this 3rd day of December, 2018

Riem Hattuz

Rian Waters
199 Allen st.
East Longmeadow MA 01028
(530)739-8951
Watersrian@gmail.com

Hampden County Superior Court
Attn: Superior Court Civil Clerk

12/14/2018

Rian Waters v. Aidan Kearney, Worcester Digital Marketing LLC, Turtleboy Enterprises LLC, and Samantha Cardin.

1879CV00344

Dear Sir or Madam,

Enclosed for filing in accordance with Superior Court Rule 9D please find the following documents:

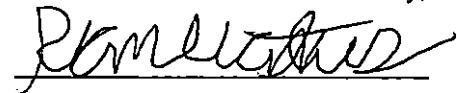
1. Plaintiff's Motion for Reconsideration.
2. Certificate of Service
3. Opposition of the Defendants, Aidan Kearney, Worcester Digital Marketing LLC, and Turtleboy Enterprises LLC to Plaintiff's Motion for Reconsideration.

RECEIVED

DEC 14 2018

LAURA S. GENTILE
CLERK OF COURTS
HAMPDEN COUNTY

Sincerely,



Rian Waters