

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

OCT 18 2018

[Signature]
CLERK OF COURTS

PLAINTIFF RIAN WATERS’S OPPOSITION TO DEFENDANTS AIDAN KEARNEY, WORCESTER DIGITAL MARKETING LLC, AND TURTLEBOY ENTERPRISES LLC EMERGENCY MOTION TO REMOVE DEFAULT AND REQUEST FOR FILING A LATE ANSWER.

The Defendants Aidan Kearney, Worcester Digital Marketing, LLC, and Turtleboy Enterprises, LLC, (“The Defendants”) Motion To Remove Default (D. Motion)¹ should be denied because it does not provide a valid good reason to default pursuant of Ma. Civil Rule 55(c). The Defendants in this case deliberately defaulted, and they only provide a conclusory argument of having a meritorious claim.

¹ The Defendants Motion to remove the Default will be cited as (D Motion). The Defendants Memorandum in support of Motion to remove the Default will be cited as (D Memo [at page number]) Affidavit of Aidan Kearney will be cited as (D AFF. ¶.[Paragraph Number]) Plaintiffs Amended Complaint (Complaint. ¶.[Paragraph Number])

Factual History

The Plaintiff filed a lawsuit for malicious prosecution and defamation on or about May 16, 2018. The Defendants were served with the a copy of the initial complaint for the underlying lawsuit on May 21, 2018 in hand by a Sheriff. The Defendants were served with a copy of the Amended Complaint (Complaint) by mail on June 1, 2018. Defendants do not dispute that service was proper. On September 18, 2018 the Clerk ordered all of the Defendants defaulted Pursuant of Mass. R. Civ. P. 55(A) for failing to defend or otherwise plead in the time allowed under Mass. R. Civ. P. 12(a). Now the Defendants presumably² seek to remove the default pursuant of Mass. R. Civ. P. 55(C)

On or about May 20, 2018 Defendant Aidan Kearney hosted a live show, and after discussing the Plaintiff’s complaint, Mr. Kearney bragged about defaulting in another case, before stating “we are undefeated in court, we are ready, bring it on.” (Exhibit C ¶. 2) On July 7th 2018 the Plaintiff was messaged by one of the Defendants Facebook accounts, Clarence Emerson. On July 8th 2018 The Plaintiff emailed the Defendants asking them not to send messages to his Facebook account. The Defendants replied “So you’re not interested in having the blog taken down.” (Exhibit A) On September 24, 2018 Defendant Aidan Kearney (Mr. Kearney) committed perjury and additional defamation by misrepresenting the contents of the emails, and alleging that the settlement negotiations that transpired as a result of these messages is attempted extortion. The Defendants also argue that their failure to respond to the complaint is due to neglect resulting from the email correspondence distracting their attention from

²The Defendants motion (D Motion) requested to remove the default pursuant of Mass. R Civ. P., Rule 55(B) The Defendants memorandum (D Memo 1) request to remove the default pursuant of Mass. R Civ. P., Rule 55(a) Although Mass. R Civ. P., Rule55(c) is the correct rule

the lawsuit. On September 23 2018 the Defendants messaged the Plaintiff’s Facebook account stating “Get ready homeboy. Funs just getting started”

ARGUMENT

To remove a default pursuant of 55c, the Defendants are required to show that they have a good reason for defaulting, and that they have meritorious defenses to the claims they seek to revive. The Defendants claim that their neglect to answer was due to the emails distracting their attention.(D. AFF ¶.6)(D. Memo 2&3) 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 Furthermore, even if the Plaintiff had said the statements that Mr. Kearney alleged, The Defendants still should have defended pursuant of Mass. R. Civ. P. 12. While the courts generally have broad discretion in removing defaults, ignoring or flouting Mass. R. Civ. P. 12a is not permitted. “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

A. The Defendants are well aware of the potential consequences of defaulting, and their decision to default was strategic flouting.

The Defendants blogged about winning a case by default on June 17 2017 (Exhibit D)

“we took them to small claims court and won after this deadbeat decided not to show up. Then he didn’t show up for the payment review, so that means it’s capias time. Small claims court is routine for Turtleboy at this point. We actually like it and we even have our preferred courthouses. That’s how often we go and win.”

The Defendants have routinely defaulted in at least three other cases. (Exhibit B ¶.2)

Mr. Kearney has talked about the strategic benefits of defaulting on more that one

occasion. (Exhibit B ¶.2) (Exhibit C ¶.2b) Furthermore, the Defendants stated that they were ready for this case on May 20, 2018, and on August 20, 2018 under oath with counsel present, Mr. Kearney inferred that the Plaintiff's Pro Se status meant this case wasn't serious. (Exhibit B ¶.3d) Mr. Kearney also fails to explain why he was unable to respond before the default order was entered, but was able to immediately hire counsel after receiving the default order.

At the end of the Defendants live show on May 20th 2018, Mr. Kearney talked about the defamatory article written about the Plaintiff, and stated that the Plaintiff threatened to sue. Then Mr. Kearney bragged about their litigation skills and experience stating "Your not going to come in here and threaten to sue us, and if you do, good luck cause we are so good at court, I can't even begin to tell you, we are undefeated, we are the New England Patriots of internet defa..deformation court."

Then Mr. Kearney discussed defaulting in a defamation case filed by Hip Hop Star Talib Kweli in Kings County Supreme Civil Court in New York. Stating "you know what we did, we just didn't fucking go. We got the papers and everything" "I'm not spending a Lawyer, and playing your bullshit game here. And you know what he did? He dropped it." Mr. Kearney closed the topic by stating "we are undefeated in court, we are ready, bring it on."

B. The Allegations of extortion in the Defendants Motion and Affidavit are malicious and not presented in good faith:

The Defendants claim that settlement negotiations in the email correspondence that they initiated is attempted extortion, and that it distracted them from answering the complaint. But none of the emails contain a threat or malicious intent as would be

required by MA G.L. CH 265 (25)³ Aidan Kearney claims that on July 26, 2018 he received an email from the Plaintiff stating that in exchange for cash the Plaintiff would dismiss the lawsuit. (D Aff. ¶4) This is perjury and a misrepresentation of the Plaintiff's email, (Exhibit A page 2) On July 24th 2018 the Plaintiff sent a email stating that he could not drop the suit completely, but that he could have a lawyer draft a proper settlement agreement. The email didn't contain any threats, or mention accepting cash. In prior cases Judges have ignored baseless extortion allegations. See Brothers v. Lipp, 2004 Mass. App. Div. 21, 26, 8, *18

C. The Defendants argument of having meritorious claims is insufficient:

Mr. Kearney's Affidavit does not state the nature of his defense to any of the claims in the amended complaint. "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 The Defendant's memorandum cites a single claim that was only directed at Turtleboy Enterprises LLC. A single claim is not enough to remove the default "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 The Defendants claim that they are not responsible for posting the statements, and that a third party posts the blogs. However this is not a meritorious defense, as the blogger who wrote the damaging article referred to himself

³ Section 25. Whoever, verbally or by a written or printed communication, maliciously threatens to accuse another of a crime or offence, or by a verbal or written or printed communication maliciously threatens an injury to the person or property of another, or any police officer or person having the powers of a police officer, or any officer, or employee of any licensing authority who verbally or by written or printed communication maliciously and unlawfully uses or threatens to use against another the power or authority vested in him, with intent thereby to extort money or any pecuniary advantage, or with intent to compel any person to do any act against his will, shall be punished by imprisonment in the state prison for not more than fifteen years, or in the house of correction for not more than two and one half years, or by a fine of not more than five thousand dollars, or both.

as Turtleboy twice in the article. The Defendants typically refer to themselves as Turtleboy whenever a statement or article concerns their business. (Exhibit D)(Complaint ¶.29)

Without support the Defendants memorandum states truth is always a defense to the Plaintiff's allegations, this is another weak defense as the article was not verbatim and contained multiple statements and conclusions that contradicted the sources they had used. Also, they noted in the article that their source wasn't reputable. (Complaint ¶.53)

D. The Plaintiff could be prejudiced if the default is removed:

The Plaintiff's Complaint (Complaint p12 & p55-62) contains both Alter Ego, and fraud allegations. Based on the Defendants prior conduct, it is very likely that the Defendants will use any additional time to falsify documents or hide assets.

Additionally the Defendants are currently being sued in another Superior Court case that was filed March 6, 2018 in Bristol county. If another lawsuit gets a large judgment before this case finishes, then it will be unlikely that the Plaintiff will be able to realize any of the judgment. So a timely answer would have certainly helped this case finish before the other case.

E. The Defendants argument that the courts generally favor a trial on merits does not excuse strategic flouting:

Prior courts have decided that removing a default requires "a party who would have a default judgment set aside must show both that there is good reason for the default and the existence of a meritorious defense." "Even if B & T satisfied the latter requirement, it would not be entitled to relief because it failed to satisfy the former."

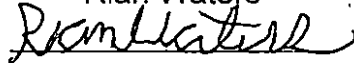
Taylor v. Boston & Taunton Transp. Co., 720 F.2d 731, 733, 1983 U.S. App. 15350, *6, 37 Fed. R. Serv. 2d (Callaghan) 970 (Internal citations omitted) Other courts have also denied this argument. “The Court regards this argument as an invitation to disregard the plain language and unmistakable purposes of the Rule, an invitation it now declines.” Barron v. Brofsky, 2016 Mass. Super. 5, *6-7, 33 Mass. L. Rep. 201, 2016 WL 418981

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 denied in all respects.

Respectfully submitted,

Rian Waters



199 Allen St.

East Longmeadow, MA. 01028

(530)739-8951

Watersrian@gmail.com Dated: October 11, 2018

Certificate Of Service

I, Rian Waters, hereby certify that on October 11th, 2018, I served my OPPOSITION TO DEFENDANTS AIDAN KEARNEY, WORCESTER DIGITAL MARKETING LLC, AND TURTLEBOY ENTERPRISES LLC EMERGENCY MOTION TO REMOVE DEFAULT AND REQUEST FOR FILING A LATE ANSWER, by mailing U.S. first class, to:

Kevin Chrisanthopoulos, Esq.
KC Law
30 Court Street, Suite 1
Westfield, MA 01085

Subscribed under the penalties of perjury.

Dated 10/11/2018



EXHIBIT A



Rian Waters <watersrian@gmail.com>

Dear Aidan

7 messages

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Sun, Jul 8, 2018 at 10:14 AM

Dear Aidan

Please don't send messages to my personal page. I was making a lot of money on a poker trip before Clarence messaged me. I will hire representation this week and you can message them.

In the meantime you can send any questions or concerns here.

Thank you in advance
Rian Waters

Turtleboy Hottakes <turtleboysports@gmail.com>
To: Rian Waters <watersrian@gmail.com>

Sun, Jul 8, 2018 at 12:28 PM

So you're not interested in having the blog taken down?
[Quoted text hidden]

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Sun, Jul 8, 2018 at 2:27 PM

I am very interested in negotiating peace, but I want some personal space.
What do you have in mind? What conditions are important to you? You can call me if you would rather obviously a NDA would protect your info.

Rian Waters
[Quoted text hidden]

Turtleboy Hottakes <turtleboysports@gmail.com>
To: Rian Waters <watersrian@gmail.com>

Sun, Jul 8, 2018 at 2:48 PM

I am admitting to no wrongdoing nor am I saying that I am Aidan Kearney. Basically I think your lawsuit is a joke but it's just not worth our time and effort to fight it. No one reads that blog anymore so it's of no use to me or the site. It's not worth dealing with you so it's easier to just take the blog down, which I believe is what you want. If you want this then drop the lawsuit, we will unpublish the blog and move on. That's the offer.
[Quoted text hidden]

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Sun, Jul 8, 2018 at 5:04 PM

I will get back to you later this week.

[Quoted text hidden]

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Tue, Jul 24, 2018 at 1:21 PM

First I want to point out that even if we don't settle, retracting the article before your response is due would cut the damages owed in half. It's tough for for me to drop you from the suit because I know my team is stronger than you think,

and if you had insurance I would get a six figure settlement during the deposition phase. But I would rather spend my time and energy winning in a poker room than winning in the court room.

Sadly I can't drop the suit completely because Samantha is still crazy and this case is slowly forcing her back to reality. But I can have a lawyer draft a proper settlement agreement and drop all the defendants besides her. Below is my offers which I tried to make as low as possible.

Option 1

1. NDA, You agree not to write about Samantha or myself.
2. \$1,500
3. \$5,000 advertising credit that expires, which honestly I will likely never use it's just to ease court approval

Option 2

1. NDA, You agree not to write about Samantha or myself without permission
2. You publish a two part article that I'll send in the rough drafts, and I will get final editor rights before they are published. First part will be about my daughters battle with Glut1 and the negligent doctor that didn't want my daughter to make it. If needed the second part will cover Samantha framing me, and my battle to get my daughter back.
3. \$5,000 ad credit that expires.

Take your time to figure what is best for you and TBS, and feel free to ask questions here or by phone.

Best Regards
Rian Waters
(530) 739-8951
[Quoted text hidden]

Rian Waters <watersrian@gmail.com>
To: Turtleboy Hottakes <Turtleboysports@gmail.com>

Mon, Jul 30, 2018 at 1:35 PM

I have to drop option 2.

Give me a phone call and we can do something closer to your offer. The Carr fire has me feeling generous.

[Quoted text hidden]

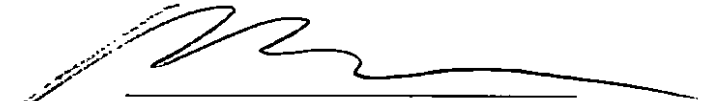
EXHIBIT B

AFFIDAVIT OF MICHAEL T. GAFFNEY

I, Michael T. Gaffney, 3333 Bleecker Street, #425, Dallas, TX, swear and depose as follows:

1. I have extensive knowledge of the methods and practices of Aidan Kearney as I am currently involved in litigation with him and had extensive communications with him over the period of approximately 3 years.
2. That Mr. Kearney has routinely failed to timely respond to Complaints as a matter of strategy to cause inconvenience, once stating that “Things like this inconvenience him. Can’t get much more into detail, but everything is by design....”:
 - a) He defaulted in January of 2018 in Dudley District Court civil action #1764CV473.
 - b) According to media accounts, he failed to file an Answer in a case filed on April 23, 2018 in Kings County Supreme Civil Court in New York.
 - c) He has not filed a timely Answer in Bristol County Superior Court civil action #1873CV00231 (filed March 6, 2018).
3. That Mr. Kearney was well aware of the instant lawsuit, had counsel, and was not “distracted”:
 - a) He was represented by counsel, Attorney Margaret Melican in Dudley District Court and Bristol County Superior Court, when he was served with the instant lawsuit.
 - b) He was also represented by Attorney Stephen Gordon on a Harassment Order in Worcester District Court on July 13, 2018 and July 25, 2018.
 - c) He did a Facebook live show about July 14, 2018, the told his audience that he had three lawsuits pending, one of which was the instant case.
 - d) On August 20, 2018 he testified under oath that he had three lawsuits pending against him and when asked “Are you being sued in the Springfield court?” He answered “I received paperwork for it, but the person never hired a lawyer so I'm not sure how that works. It was months ago and I haven't received anything about it since.” No mention was made of any distraction or extortion.
4. On July 25, 2018, the day prior to filing his complaint with the Holden Police alleging extortion here, Mr. Kearney was at a Hearing on a Protective Order represented by Attorney Gordon where Judge Robert Pelligrini advised that the affidavit presented by the victim showed that he was trying to extort her.
5. Mr. Kearney is under investigation with the Worcester Police Department (for harassment, extortion and witness tampering.)

Signed under the pains and penalties of perjury this 2nd day of October, 2018.



Michael Gaffney

EXHIBIT C

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)

AFFIDAVIT OF RIAN WATERS

1. I am the Pro Se Plaintiff in the above captioned matter.
2. On or about May 20, 2018 Defendant Aidan Kearney discussed my complaint, and then stated the following
 - a. “Your not going to come in here and threaten to sue us, and if you do, good luck cause we are so good at court, I can’t even begin to tell you, we are undefeated, we are the New England Patriots of internet defa..deformation court.”
 - b. “We took down Talib Kweli, who sued us last year, and were like yeah bitch, were not showing up, he sued us in Queens District Court, and you know what we did, we just didn’t fucking go. We got the papers and everything, and were like fuck you Kweli. I’m not spending a Lawyer, and playing your bullshit game here. And you know what he did? He dropped it, cause he’s a bitch.”
 - c. “We are undefeated in Court, so bring that shit on, we are ready.”
3. One of the Defendants Facebook accounts messaged my personal account on July 7, 2018, and September 23, 2018

Signed under the pains and penalties of perjury this 10th day of October, 2018

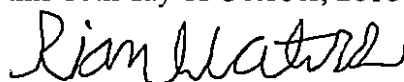
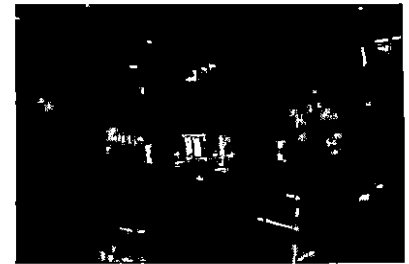
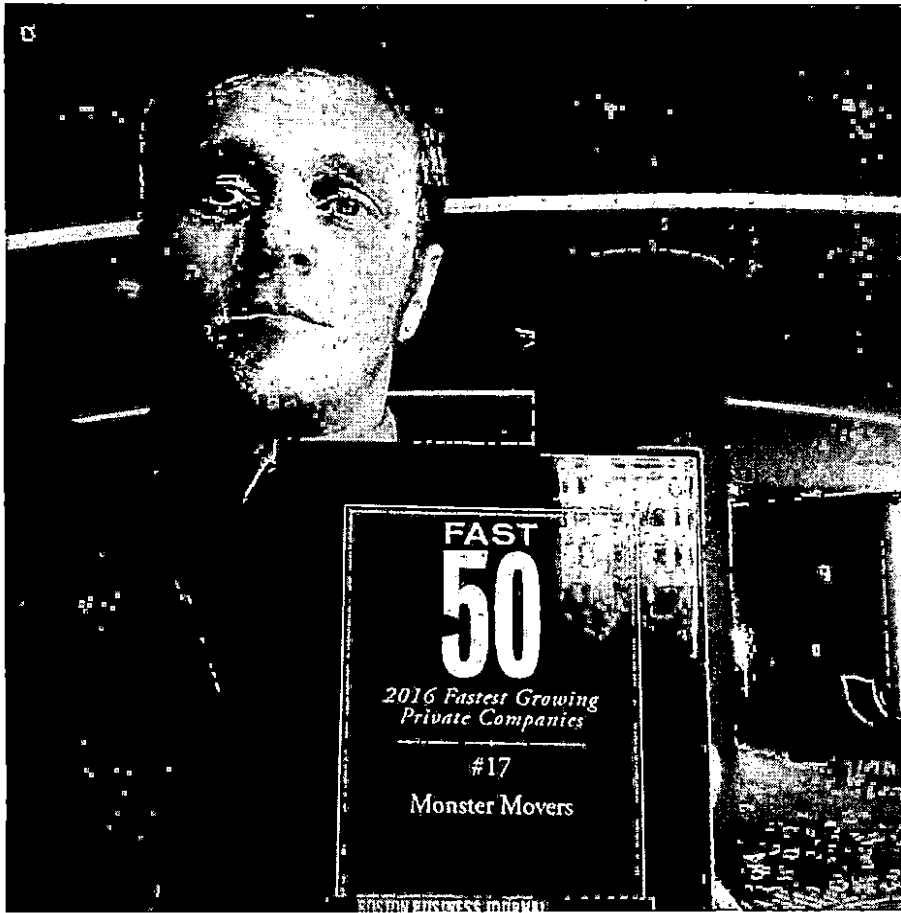


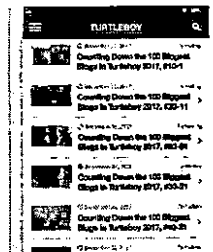
EXHIBIT D



BENNIE'S CAFE



CLICK TO DOWNLOAD THE TURTLEBOY APP



TRENDING NOW

It's pretty easy to grow fast when Turtleboy sends you referrals and then you decide you don't wanna pay the piper. It's cool though, because we took them to small claims court and won after this deadbeat decided not to show up. Then he didn't show up for the payment review, so that means it's capias time. Small claims court is routine for Turtleboy at this point. We actually like it and we even have our preferred courthouses. That's how often we go and win.

Can't say I blamed Bill Antonelli for not showing though since he had no shot at winning. His wife Sarah Christie-Antonelli got in contact with us after riding the turtle for a while and asked to promote her business. We agreed. But the problem was that she forgot to tell her husband, so when the bill got to him he was like, "what the hell is a Turtleboy?" And since he probably considers us a joke, he decided he wasn't gonna pay. Dude is a real tough guy if you ever meet him in person. He'll be the first to tell you he's from Charlestown. Hardo central.

