

IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO

XCentric Ventures, LLC,

Plaintiff,

v.

Case No. 15CVH-7212 (Young, J.)

Garner Aukerman,

Defendant.

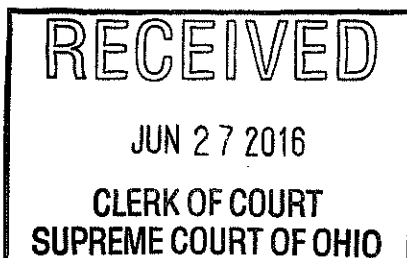
ENTRY GRANTING DEFAULT JUDGMENT FILED JANUARY 7, 2016

This matter is before the Court on Plaintiff's Motion for Default Judgment filed January 7, 2016. Pursuant to Loc.R. 21, this matter is now deemed submitted.

Plaintiff XCentric Ventures, LLC's ("Plaintiff") filed the Complaint against Defendant Garner Aukerman ("Defendant"), on August 18, 2015, asserting that Defendant is a vexatious litigator, seeking declaratory judgment that Defendant is a vexatious litigator, and claiming Plaintiff is the subject of Defendant's malicious prosecution.

When the certified mail receipt is signed and returned, there is a presumption that valid service was completed. *New Coop. Co. v. Liquor Control Comm'n*, 10th Dist. Franklin No. 01AP-1124, 2002-Ohio-2244, ¶ 8. This presumption is rebuttable by sufficient evidence demonstrating non-service. *Id.* at ¶ 9. Valid service of process is presumed when any person at the defendant's address received the certified mail envelope, whether or not the recipient is the defendant's agent. *TCC Mgmt. v. Clapp*, 10th Dist. Franklin No. 05AP-42, 2005-Ohio-4357, ¶ 11 citing *New Co-Operative Co. v. Liquor Control Comm.*, Franklin App. No. 01AP-1124, 2002 Ohio 2244, at P8.

Here, certified mail service was perfected on August 21, 2015. There is a miscellaneous docket entry with a purported letter from H. Bruce Thurmond. Upon review, the Court finds that



this is not sufficient evidence to demonstrate non-service. This letter is not a sworn statement and the Court has no way of authenticating it.

Service of process was achieved upon Defendant; however, Defendant has failed to appear, plead or otherwise defend in this matter. On January 7, 2016, Plaintiff filed a Motion for Default Judgment against Defendant ("Motion"). Plaintiff's Motion is well taken. Accordingly, being fully advised in this matter, the Court hereby **FINDS** the following:

1. Defendant was served with process and the Complaint pursuant to Civ.R. 4.1(A)(1)(a) on August 21, 2015;
2. The service upon Defendant was further reasonably calculated to provide Defendant with notice of these proceedings and an opportunity to be heard;
3. Defendant was required to respond to Plaintiff's Complaint on or before September 18, 2015;
4. Defendant failed to appear, plead or move in response to Plaintiff's Complaint, or otherwise defend in this matter;
5. Plaintiff's Motion for Default Judgment is timely;
6. Defendant is in default;
7. Plaintiff's Complaint, and the Exhibits attached thereto, documenting Defendant's conduct establish that Defendant qualifies as a vexatious litigator pursuant to R.C. 2323.52(A)(3);
8. Defendant has engaged in vexatious conduct as set forth in R.C. 2323.52(A)(2);
and
9. Defendant is liable to Plaintiff for money damages pursuant to the claims in Plaintiff's Complaint.

Accordingly, the Court hereby **ORDERS** the following:

1. Plaintiff's Motion for Default Judgment against Defendant is **GRANTED**;
2. Defendant is declared to be a vexatious litigator;
3. Defendant is prohibited from doing the following without first obtaining leave of court to proceed:

- (a) Instituting legal proceedings in the court of claims or in a court of common pleas, municipal court, or county court; [R.C. 2323.52(D)(1)(a)]
- (b) Continuing any legal proceedings that Defendant had instituted in any of the courts specified in division (D)(1)(a) of R.C. 2323.52 prior to the entry of this order; [R.C. 2323.52(D)(1)(b)]
- (c) Making any application, other than an application for leave to proceed under division (F)(1) of R.C. 2323.52, in any legal proceedings instituted by Defendant or another person in any of the courts specified in division (D)(1)(a) of R.C. 2323.52; [R.C. 2323.52(D)(1)(c)]

4. Plaintiff is entitled to damages paid by Defendant as prayed for in Plaintiff's Complaint, to wit:

- (a) Plaintiff's litigation costs;
- (b) Plaintiff's reasonable attorneys' fees, which shall be held in abeyance until Plaintiff files an application requesting an award of fees; and
- (c) Plaintiff's other reasonable expenses incurred in connection with this action and the prior actions described in Plaintiff's Complaint, all to be determined by the Court at a hearing regarding Plaintiff's damages; and

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5. There shall be a **HEARING** held before a Magistrate of the Court to determine the full amount of damages due from Defendant to Plaintiff. This hearing shall be set by a separate Order of Reference.

IT IS SO ORDERED.

Copies to:

Jonathan Secrest
(Via electronic filing)
Counsel for Plaintiff

Garner Aukerman
3669 Hilliard Station Road
Hilliard, OH 43026
Defendant

Franklin County Court of Common Pleas

Date: 02-09-2016
Case Title: XCENTRIC VENTURES LLC -VS- GARNER AUKERMAN
Case Number: 15CV007212
Type: DECISION/ENTRY

It Is So Ordered.



/s/ Judge David C. Young

Electronically signed on 2016-Feb-09 page 5 of 5

THE STATE OF OHIO }
Franklin County, ss }
MARYELLEN O'SHAUGHNESSY, Clerk
OF THE COURT OF COMMON
PLEAS WITHIN AND FOR
SAID COUNTY,

HEREBY CERTIFY THAT THE ABOVE AND FORE-
GOING IS TRULY TAKEN AND COPIED FROM THE
ORIGINAL Decision Entry
NOW ON FILE IN MY OFFICE
WITNESS MY HAND AND SEAL OF SAID COUNTY
THIS 22 DAY OF June A.D. 2016
MARYELLEN O'SHAUGHNESSY, Clerk

By sm Deputy

Court Disposition

Case Number: 15CV007212

Case Style: XCENTRIC VENTURES LLC -VS- GARNER
AUKERMAN

Motion Tie Off Information:

1. Motion CMS Document Id: 15CV0072122016-01-0799980000
Document Title: 01-07-2016-MOTION FOR DEFAULT JUDGMENT
- PLAINTIFF: XCENTRIC VENTURES LLC
Disposition: MOTION GRANTED