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IN THE CIRCUIT COURT OF THE 17TH JUDICIAL CIRCUIT IN AND FOR BROWARD COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO. CACE-22-001852

KAMEKA MANAGEMENT SOLUTIONS, INC. and ERYCK DZOTSI,

Plaintiff,

-vs-

16260 SADDLE CLUB ROAD, LLC, RYAN BURKE, VEW LIVE, LLC and 2045 SW 127th Avenue, LLC.

Defendants.
_____/

SPECIAL APPEARANCE BY DEFENDANTS IN RESPONSE TO PLAINTIFF'S REQUEST FOR A CMC

COMES NOW the Defendants, by special appearance of the undersigned counsel and in response to Plaintiff's request for a CMC responds as follows:

1. On November 22nd, 2022, the Defendants filed their motion to quash service of process and to set aside default and order of sale.

2. Thereafter, on January 26, 2023, the Defendants filed their notice of supplemental authority in support of the motion to quash and vacate.

3. On January 30th, 2023 this matter came before this Court on Defendants's motion to quash service and set aside defaults. As the Court may recall, Defendant submitted his affidavit and travel documents that he was in Las Vegas, NV, from April 1st through April 14th, 2022. Therefore he was not the person served by the process

server on April 11, 2022. The transcripts of that hearing is attached to this response as exhibit 1. This transcript was sent to opposing counsel on April 27th, 2023. Therefore he was totally aware that the motion to quash was required to be conducted before any other motions were heard by this court.

4. The deposition of Ryan Burke was conducted on February 23, 2023. Plaintiff's prior counsel, Ray Carrera, accepted our offer that the undersigned would accept service for the Defendants conditioned on the order of default was vacated. (See emails attached as Exhibit 2).

5. On March 21, 2023, Plaintiff's then counsel offered to vacate default, grant Defendants' motion to quash if Defendants' counsel would accept service. We agreed to the offer. On March 22, 2023, Plaintiffs terminated Mr. Carrera and retained their present counsel.

6. If Defendant chose to enforce the agreement in that it would only lead to further delay and the issue whether Mr. Carrera had the authority would be an issue. We chose not to go down this road.

MEMORANDUM OF LAW

It was established long ago that a court may not enter a default judgment with an undisposed motion that would affect the Plaintiff's right to proceed to judgment. *Singh v. Kumar*, 234 So.3d 1, 3 (Fla. 4th DCA 2017); see also *Goodman v. Joffe* 57 So.3d 1001 (Fla. 4th DCA 2011) ("the trial court should have ruled on the Defendant's pending motion to vacate the default entered against her before entering a default judgment"); *Vacation Escape, Inc., v. Mich Nat'l Bank*, 735 So.2d 528, 529, 530 (Fla. 4th DCA 1999) ("finding that the trial court reversibly erred in entering final default judgment without first

determining the merits of a Defendant's pending motion to set aside the default"). On May 3d, 2023, the 4th DCA in *Blatter v. D.N. Suite, Inc.*, No. 4 D22-2398 reversed Broward County Circuit Court Judge McCarthy committed reversible error and abused its discretion by granting motion for final judgement without entering a ruling on a pending motion to vacate default. (See attached Exhibit 4).

7. It was apparent from this Court's transcript of January 30th, 2023 as well as the undisputed cases law cited that there is no need for this Court to waste ts valuable judicial resources to even conduct a CMC. The Plaintiff's counsel merely needed to request an hour evidentiary hearing from this court on Defendants' motion to quash and vacate.

8. Instead, despite Defendants' objections to the General Master filed timely on April 26th, 2023, they persisted in trying to set hearings before the General Magistrate.

9. Plaintiff's ignored our request to seek when they were setting the motions. (See emails attached as exhibit 3).

10. The undersigned advised Plaintiff's counsel that the objection was "self-executing" and we knew of no case law which requires a circuit court judge to hear the objection. The general magistrate agreed and canceled the hearings set for June 1st and 2nd, 2023.

11. Plaintiff's counsel still insist on setting the motions with the Magistrate "until the court withdraws the referral". This procedure is without any legal authority. It was only when Magistrate saw that an objection was timely filed that she agreed it was "self-executing" and she cancelled the June 1st and June 2nd hearings.

DEFENDANTS' OBJECTION TO REFERRAL TO MAGISTRATE

This Court entered and referred this case to the general magistrate in April 24th, 2023. This referral provided that any party could file an objection within ten (10) days. On April 26th, 2023, the Defendants timely filed their objection.

Contrary to the position of Plaintiff's counsel, there was no requirement to schedule a hearing on the objection as the court has no discretion once an objection is filed by a party. Once the general magistrate was advised of the timely objection, she agreed the objection was "self-executing" and the matter never should have been set before the magistrate. She then cancelled the hearings. While the Plaintiff were advised that hearings had been scheduled for June 1st and 2d, 2023 they failed to advise that the hearings were set before magistrate not the circuit judge.

The representations made by Plaintiff at paragraph 6 of their motion is false. At no point did the undersigned ever agree to a hearing before the general magistrate. The undersigned not only filed his timely objection on April 26th, 2023, but in emails further voiced his objections on May 1st, May 10th and May 15th, 2023 (the Plaintiff failed to advise that the June 1st and 2nd hearings were set before the general magistrate). Plaintiff's counsel should be sanctioned for these misrepresentations to this Court.

CONCLUSION

Plaintiff's counsel has disregarded the ruling of this Court that if the parties still had issues after the depositions were concluded that the court would conduct an evidentiary hearing on the motion to quash and vacate. (See January 30th transcript at page 11, line 8-11). Plaintiff's counsel also chose to ignore the clear undisputed case

law and sought to have the motion for final judgment heard prior to the motion to quash and ignored the fact that once an objection to a referral to a general magistrate is filed it is "self-executing" and no hearings should be set before the magistrate, only the circuit court judge has jurisdiction to hear all motions. Plaintiff's counsel actions have caused Defendants' counsel to needlessly spend time responding to magistrate issue as well as wasting this court's time and Defendants' counsel time in setting the CMC when the only option was to simply set an evidentiary hearing before the court. Defendants' counsel is entitled to reasonable attorney fees based on the above.

Respectfully Submitted,

/s/: ROBERT A. ROSENBLATT

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Clerk of Court via e-filing and copies were furnished via email to: Keith Gaudioso, Esq., 2332 Galiano Street, 2d Floor, Coral Gables, Fl 33134, [redacted]

Dated this 2nd day of June, 2023.

Respectfully Submitted

THE ROSENBLATT LAW FIRM
7695 SW 104th Street, 2d Floor
Pinecrest, Fl 33156
[redacted]

/s/: ROBERT A. ROSENBLATT
Attorney for Defendants
Fla.Bar No. 153239