

STATE OF MICHIGAN

MACOMB COUNTY CIRCUIT COURT

GROUP MRJ, INC., d/b/a PASSPORT
PIZZA, and PASSPORT USA, INC.,

Plaintiffs,

Case No. 2014-584-CK

vs.

GALLO RETAIL GROUP, LLC, and
ANTHONY GALLO, a/k/a TONY J.
GALLO,

Defendants.

and

GALLO RETAIL GROUP, LLC,

Plaintiff,

Case No. 2014-666-CK

vs.

MICHAEL BISCHOFF and GROUP
MRJ, INC., d/b/a PASSPORT PIZZA,

Defendants.

OPINION AND ORDER

Michael Bischoff and Group MRJ, Inc. (the “Passport Parties”) have filed a “Motion for Reconsideration from Denial of Motion for Relief from Order Dated January 28, 2014 or to Set Aside the Same.”

In addition, Plaintiff Gallo Retail Group, LLC has filed a motion for entry of default and default judgment in case no. 2014-666-CK. The Passport Parties have filed a response and request that the motion be denied.

Factual and Procedural History

On January 28, 2014, Judge Leduc of the 42-1 District Court entered an order (1) Requiring Defendant Michael Bischoff to pay Plaintiffs' counsel \$650.00 for failing to appear at a January 13, 2014 hearing, (2) Requiring Defendant to post a \$35,000.00 cash or surety bond, and (3) Recusing himself from the case and referring the case to the 42-2 District Court.

On February 19, 2014, the 42-2 District Court transferred these matters to this Court pursuant to MCR 4.002.

On March 28, 2014, Defendants filed an emergency motion to set aside the January 28, 2014 Order and for clarification of an Order dated August 19, 2013. On April 3, 2014, the Court held a hearing in connection with the motions. At the conclusion of the hearing, the Court entered an Order, *inter alia*, requiring Defendant Michael Bischoff to post the \$35,000.00 bond as required by the January 28, 2014 Order by April 7, 2014.

On April 10, 2014, the Court held a contempt hearing as the result of Defendant's failure to post the required bond. At the conclusion of the hearing, the Court held Defendant in contempt and struck his counter-complaint and answer.

On April 24, 2014, Defendants filed their motion for reconsideration of this Court's decision to deny their motion to set aside the January 28, 2014 Order and require Defendant to post the \$35,000.00 bond. On July 7, 2014, the Court entered its Opinion and Order denying the motion.

On July 31, 2014, the Passport Parties filed their instant “Motion for Reconsideration from Denial of Motion for Relief from Order Dated January 28, 2014 or to Set Aside the Same.”

On August 13, 2014, Plaintiff filed its instant motion for default and default judgment in case no. 2014-666-CK. The Passport Parties have since filed a response and request that the motion be denied.

(1) The Passport Parties “Motion for Reconsideration From Denial of Motion for Relief from Order Dated January 28, 2014 or to Set Aside the Same.”

The Passport Parties pending motion was filed on July 31, 2014. While the motion purports to be at least partially a motion for reconsideration, the Court did not enter any opinions or substantive orders within 21 day prior to July 31, 2014. Motions for reconsideration must be filed within 21 days of the challenged decision. MCR 2.119(F)(1). Indeed, the only opinion entered close to the 21 day deadline was the Court’s July 7, 2014 Opinion and Order denying the Passport Parties’ prior motion for reconsideration. Accordingly, not only is the instant motion untimely to the extent it was filed as a motion for reconsideration, it is procedurally improper as the Passport Parties have not cited to any authority allowing a party to file a motion for reconsideration of an order denying a prior motion for reconsideration. For these reasons, the Passport Parties’ motion must be denied to the extent it was filed as a motion for reconsideration.

With respect to the remainder of the Passport Parties’ motion, the motion does not identify which court rule it seeks relief under. Given the Passport Parties’ failure to identify the grounds for relief, or any potential authority for such relief, the Court must deny the motion.

(2) Plaintiff’s Motion for Default and Default Judgment in Case No. 2014-666-CK

In support of its motion, Plaintiff contends that it is entitled to the entry of a default and default judgment against the Passport Parties. Specifically, Plaintiff contends that the Court struck and dismissed the Passport Parties' counter-complaint and answer for failing to follow the Court's Orders (*See* April 10, 2014 Order), and that the Passport parties have failed to file an answer or otherwise defend the claims. MCR 2.603(A)(1) provides that a default shall be entered "if a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules..." In this case, the only answer the Passport Parties have filed was stricken by the Court in its April 10, 2014 Order. Moreover, while the Passport Parties have filed a response to the instant motion, they have failed to provide any reason as to why a default must not be entered. Accordingly, Plaintiff's motion for a default must be granted.

With respect to Plaintiff's request for a default judgment, Plaintiff has failed to provide any evidence as to the amount of damages it has suffered. Moreover, MCR 2.603(B)(1) provides that 7 days notice of a default must be provide prior to the entry of a default judgment. Accordingly, the Court must deny Plaintiff's request for a default judgment at this time.

Conclusion

For the reasons set forth above, Michael Bischoff and Group MRJ, Inc's "Motion for Reconsideration from Denial of Motion for Relief from Order Dated January 28, 2014 or to Set Aside the Same" is DENIED.

In addition, Gallo Retail Group, LLC's motion for a default against Michael Bischoff and Group MRJ, Inc., d/b/a Passport Pizza is GRANTED, IN PART, and DENIED WITHOUT PREJUDICE, IN PART. Specifically, a default is hereby entered

against Michael Bischoff and Group MRJ, Inc., d/b/a Passport Pizza in case no. 2014-666-CK. Gallo Retail Group, LLC's request for a default judgment is DENIED, WITHOUT PREJUDICE. Pursuant to MCR 2.602(A)(3), this Opinion and Order neither resolves the last pending claim nor closes this case.

IT IS SO ORDERED.

/s/ John C. Foster
JOHN C. FOSTER, Circuit Judge

Dated: September 22, 2014

JCF/sr

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