Superior Court of the Commonwealth of Massachusetts
County of Middlesex

Walter Tuvell
836 Main St.
Reading, MA 01867
Plaintiff, Pro Se

v.

Jack Marshall
2707 Westminster Place
Alexandria, VA 22305
Defendant

Case № 1781CV02701

MEMORANDUM IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT (BIS)

MEMORANDUM (IN SUPPORT OF DEFAULT JUDGMENT)

Plaintiff hereby files this Memorandum in support of his accompanying Motion[1] (subject to the caveat expressed in fn. 5 *infra*).

As reason in support for the Motion, Plaintiff states as follows:

- Plaintiff filed Complaint in this action at Court on Wed Sep 13.[2]
- Plaintiff properly served Complaint (and Summons) upon Defendant on Thu Sep 14 (in the manner prescribed by MRCP

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1 This Memorandum (and its accompanying Motion) need not be served upon Defendant, according to MRCP 5(a): "No service need be made on any party in default."

2 All dates herein are implicitly understood to occur in the year 2017.

4(e)(3), as quoted on the Summons itself: “[A]ny form of mail addressed to the person to be served and requiring a signed receipt”).

- Defendant received service of Complaint and Summons on Thu Sep 21,[3] as proven by the Proof of Service filed by Plaintiff, pursuant to MRCP 4(f)[4] on Mon Sep 25.

- Defendant has (now, at the time of this writing, Tue Oct 17) failed to file Answer to Complaint in a timely manner[5] — namely, within the mandatory deadline of a “nominal 20 days” (adjusted

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3 It is noted that, in an email to Plaintiff dated Wed Sep 21 (a true copy of which is included as the final page of Plaintiff’s filed Proof of Service), Defendant objects to certain precise details of the manner in which he *received* service (but not to the manner in which Plaintiff *sent* service). Nevertheless, in said email, ***Defendant does indeed explicitly/knowingly self-declare/admit that service was in actuality validly completed*** — thereby satisfying the criterion of MRCP 4(f): “evidence of personal delivery to the addressee as may be satisfactory to the court.”

4 Proof of Service need not be served upon Defendant, according to MRCP 4(f) (cf. Reporter’s Note of 1996: “proof of service … is required to be made only to the court”).

5 The instant Motion, and particularly the computation in fn. 6 *infra,* is predicated on the assumption that Defendant has not made any filing that would trigger an adjustment/enlargement of time, per MRCP 12(a)(2) (and, certainly, Plaintiff is not aware of any such filing).

to “25 calendar days”)[6] after Defendant’s receipt of service on Thu Sep 21, which deadline expired (yesterday) on Mon Oct 16.

- Therefore, the present Motion for Default Judgment is now “in-order” and ripe, pursuant to MRCP 4(b), 55(a), 55(b(2)).[7]

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6 *Computation of Time (subject to fn. 5 supra):* The said “nominal 20 days” has been adjusted (enlarged) to “25 calendar days” in the present instance, as follows: (i) the initial/baseline “20-day clock” (MRCP 12(a)(1), and prominently displayed in boldface on the face of the Summons served upon Defendant) started ticking on Thu Sep 21 (when Defendant received service), and it expired on Wed Oct 11 (which was not a Saturday, Sunday or legal holiday, hence MRCP 6(a) does not apply); (ii) the 3-day adjustment specified by MRCP 6(d) is not to be prepended to the beginning of the 20-day period, because that adjustment applies only to “notices or papers” (not to pleadings), and because Defendant self-declares/admits he did actually have Complaint and Summons in-hand on Thu Sep 21; **(iii) therefore, to be in compliance, Defendant must have actually mailed (or otherwise filed) his Answer on or before Wed Oct 11,** in light of item (i) *supra* of this list, and pursuant to MRCP 5(b): “[s]ervice by mail is complete upon mailing;” (iv) if (and only if) Defendant did in fact U.S.-mail (as opposed to other means of filing, such as in-person or by-agent) his Answer (by the deadline of Wed Oct 11), then the 3-day adjustment specified by MRCP 6(d) is to be appended to the end of the 20-day period, resulting in “23 calendar days,” expiring on Sat Oct 14; (v) finally, as a fairness/courtesy gesture (“almost” by MRCP 6(a) again), receipt (as opposed to mailing) of Defendant’s Answer can/should/must be expected on the next day after Sat Oct 14 which is not a Saturday, Sunday or legal holiday — the result being Mon Oct 16 (yesterday), a total of “25 calendar days” after Wed Sep 21. (But, (vi) that didn’t happen, by Defendant’s own self-admission on his blogsite, attached hereto as Exhibit A *infra*.)

7 Note that Defendant is a lawyer in good standing licensed to practice in Massachusetts — so “excusable neglect” does not obtain as a defense for Defendant with respect to the instant Motion for Default Judgment. For, Defendant knows full well that the proper way to challenge sufficiency of (service of) process is via pleading or motion pursuant to MRCP 12(b), 12(f) — and not by “contemptuously ignoring the whole thing.” That latter tactic has been implemented, presumably, in an attempt to trick *pro se* Plaintiff into off-guard error: this is exhibited by the email to Plaintiff dated Wed Sep 21 (included in Plaintiff’s Proof of Service, mentioned in fn. 3 *supra*). That said email also included additional *threatening items of false legal advice to an adversarial pro se litigant* **(thereby breaching established mores of Lawyer Ethics, namely, ABA Rules of Professional Conduct, even though Defendant pretends to be a “Legal Ethicist”),** such as: (i) falsely claiming/advising necessity of a

SIGNATURE; VERIFICATION

Respectfully submitted, and signed, under the pains and penalties of perjury:

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October 17 2017

"demand letter" in a Defamation cause; (ii) false claiming/advising a 30-day waiting period; and (iii) falsely claiming/advising that Plaintiff stated he sent such by registered mail. Noting that, instead, Plaintiff claimed to (and did) send a free-will "written" "demand letter." *ABA Rules of Professional Conduct 1.0(n):* "'Writing' or 'written' denotes a tangible or electronic record of a communication or representation …".

EXHIBIT A

Excerpt from Defendant's blogsite, at https://ethicsalarms.com/2017/10/16/morning-ethics-warm-up-10162017-snl-nfl-collusion-gossip-and-bribery (Mon Oct 16, 2017, 2:07 p.m. EST), item #1. This self-confessional excerpt proves that Defendant was still writing his Motion to Dismiss (in lieu of Answer, see MRCP 12(a)(2)) on Mon Oct 16, hence a fortiori had not filed it by the mandatory deadline of Wed Oct11 (cf. fn. 6(iii) supra).[8]

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8 Note how Defendant here falsely mischaracterizes Plaintiff's Complaint, in (at least) two ways: "The Complaint has no legal cites, because no legal authority supports its claims." Namely: (i) all "legal authorities" do indeed support Plaintiff's claims; (ii) by the tenets of "notice pleading," Complaint need not contain "legal cites" in any case. This, therefore, provides another instance of Defendant's breach of Legal Ethics (cf. fn. 7 *supra*).

Good Morning.

1 Why am I only now getting around to today's Warm-Up? It is because I spent more than 8 hours over the weekend, and three hours this morning, writing a Motion to Dismiss in response to a ridiculous, retaliatory, vindictive lawsuit by a *pro se* litigant with a grudge. The complaint has no legal cites, because no legal authority supports its claims. I, however, have to cite cases to show why the Complaint is completely without merit. Since the Complaint is a brain-rotting 18 pages, I have to carefully redact it to have a prayer of meeting the 20 page limit for motions. Even then, there is no guarantee that this won't drag on for months.

No penalty will be exacted on the plaintiff for filing this spurious and groundless law suit. To do so would chill the right of citizens to seek justice and redress for wrongs through the courts. Thus the underlying objective of the suit will be accomplished: to force me to expend time and effort that I have far better uses for. Ethics Alarms readers are affected, my family is effected, my work is affected, my enjoyment of life is affected, and, of course, the system and the taxpayers who fund it are affected. This is an abuse of the system, but one that cannot and must not be impeded.