

DANIEL J. PLATKOWSKI,

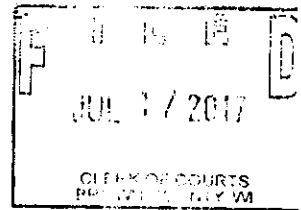
Plaintiff,

Case No. 16-CV-1137

vs.

HOWARD BEDFORD,
QUOTIENT PARTNERS,
TISSUE TECHNOLOGY, LLC, and
RON VAN DEN HEUVEL,

Defendants.



**BRIEF IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT AGAINST
TISSUE TECHNOLOGY, LLC AND RON VAN DEN HEUVEL
(CLAIM FOR RELIEF VIII)**

Daniel J. Platkowski ("Platkowski"), by his attorneys, the Law Firm of Conway, Olejniczak & Jerry, S.C., submits this brief in support of his Motion for Default Judgment and supporting Affidavit, both filed March 22, 2017.

PROCEDURAL HISTORY

Platkowski filed the original Complaint in this matter on August 26, 2016. (8/26/16 Compl.). Soon after, Platkowski amended the Complaint to add a claim for money judgment against Defendants Tissue Technology, LLC ("Tissue Tech") and Ron Van Den Heuvel ("RVDH"). (10/28/16 Amend. Compl.). Specifically, the Amended Complaint alleged that Tissue Tech and RVDH each executed a Guaranty in favor of Platkowski, in which they agreed to pay Platkwoski for any loss suffered by Platkowski from financing certain commercial paper machines (the "Bretting machines"). (Amend. Compl. ¶¶76-77).

Tissue Tech and RVDH were each personally served with an authenticated copy of the Amended Complaint and the original Complaint¹ on November 1, 2016, as evidenced by the Affidavits of Service filed with this Court. (11/11/16 Affidavits of Service). Tissue Tech and RVDH were required to file an answer within forty-five (45) days of service (or by December 16, 2016). Neither Tissue Tech nor RVDH filed any responsive pleading during that period.

On March 22, 2017, Platkowski filed his Motion for Default Judgment (the “Motion”). Platkowski’s sworn Affidavit, which accompanied the Motion, itemized the loss he suffered in financing the Bretting Machines, as required by Wis. Stat. §806.02(2) and (3), and Local Rule 406(b). (Platkowski Aff., ¶¶ 3-4).

On April 12, 2017, almost four months after the answer period expired, RVDH filed an affidavit in opposition to the Motion (the “RVDH Affidavit”). The RVDH Affidavit attempts to raise substantive defenses on behalf of both Tissue Tech and RVDH to the claim asserted by Platkowski.

Since April 12, 2017, this case has twice been judicially re-assigned. To date, the Motion has not been considered by the Court.

ARGUMENTS

I. THE RVDH AFFDAVIT DOES NOT DENY SPECIFIC ALEGATIONS IN THE COMPLAINT AND, AS A RESULT, THOSE ALLEGATIONS ARE DEEMED ADMITED.

The RVDH Affidavit, which consists primarily of RVDH’s personal opinions and conclusory allegations, does not constitute an Answer to the Complaint. A proper answer must admit or deny each of the specific averments made by Platkowski. Wis. Stat. §802.02(2). The RVDH Affidavit does not meet this standard.

Platkowski has sufficiently plead a cause of action against Tissue Technologies and RVDH by alleging the existence of the Guaranty and a breach of the Guaranty. (10/28/16

¹ Tissue Tech and RVDH were also personally served with other motions that were pending at the time of service.

Amend. Compl. ¶76 – 77). Platkowski has also sufficiently attested to the damages sustained as a result of the alleged breach. (3/22/17 Platkowski Aff. ¶3). In response, the RVDH Affidavit does not deny the existence of the Guaranty or the breach of that Guaranty. In fact, the RVDH Affidavit impliedly admits the existence of the Guaranty by arguing that the “...2009 shortfall guarantee document cannot know [sic] be resurrected ...” (RVDH Aff. ¶10).

The effect of the Defendants’ failure to deny the allegations in the Complaint is that the allegations are admitted. Wis. Stat. §802.02(4). This Court should grant the Motion on those grounds alone.

II. THE RVDH AFFIDAVIT WAS NOT TIMELY FILED AND NEITHER RVDH NOR TISSUE TECHNOLOGY MOVED THIS COURT FOR AN EXTENSION OF TIME TO FILE AN ANSWER.

Platkowski properly served the Amended Summons and Complaint upon RVDH and Tissue Tech as evidenced by the Affidavits of Service on file with this Court. The RVDH Affidavit does not challenge service of the Amended Summons and Complaint. The First Amended Summons states, in relevant part:

Within forty-five (45) days of receiving this First Amended Summons, all Defendants must respond with a written answer...

If you do not provide a proper answer within the time period stated above, the Court may grant judgment against you for the award of money or other legal action requested in the First Amended Complaint....

This language is sufficient to alert any defendant of the necessity to file an answer within the statutory time limit. A reasonably prudent person would have not have failed to file a timely answer within the 45-day answer period.²

² Platkowski asks the Court to take judicial notice of the fact that RVDH and Tissue Tech are experienced in civil litigation matters – both in the capacity as a plaintiff and a defendant – leaving little argument that either acted reasonably in not answering the Amended Complaint timely. *See e.g.*, Brown County Case No. 2009-CV-179, Brown County Case No. 2009-CV-439, Outagamie County Case No. 2009-CV1527, Brown County Case No. 2009-CV-980, Brown County Case No. 2009-CV988, Brown County Case No. 2009-SC-148, Brown County Case No. 2009-CV-1050, Brown County Case No. 2009-CV-1785, Brown County Case No. 2010-CV-1838, Brown County Case No. 2010-CV-2154, Brown County Case No. 2010-CV-2318, Brown County Case No. 2010-CV-2506, Brown County Case No. 2010-CV-2715, Brown County Case No. 2010-CV-2779, Brown County Case No. 2012-CV944,

RVDH and Tissue Tech's Answer in this matter was due no later than December 16, 2016, pursuant to Wis. Stat. §801.09(2)(b). Neither answered. If either RVDH or Tissue Tech needed additional time to file their Answer, they had ample opportunity to request additional time to respond, pursuant to Wis. Stat. §801.15, but each failed to do so. Instead, RVDH and Tissue Tech simply ignored the deadline imposed by Wis. Stat. §801.09(2)(b).

To the extent that the RVDH Affidavit is construed as an answer, it is untimely.

III. THE RVDH AFFIDAVIT CONTAINS TO NO FACTS SUPPORTING THAT THE FAILURE OF RVDH AND/OR TISSUE TECH TO FILE A TIMELY ANSWER WAS CAUSED BY EXCUSABLE NEGLIGENCE.

In the event that RVDH and Tissue Tech now ask the Court to enlarge their time for answering the First Amended Complaint, such relief should be denied as RVDH and Tissue Tech have offered no showing of "excusable neglect." This Court has authority, pursuant to Wis. Stats §801.15(2)(a) to enlarge the answer period, provided that the party seeking the enlargement of time can show that it failed to file an answer through some "excusable neglect." "Excusable neglect" requires something more than simple neglect, carelessness, or inattentiveness. See *Martin v. Griffin*, 117 Wis.2d 438, 443, 344 N.W.2d 206, 209 (Ct. App. 1984). Wisconsin courts have described "excusable neglect" as "that neglect which might have been the act of a reasonably prudent person under the same circumstances". See *Martin*, supra at 443; *Wagner v. Springaire Corp.*, 79 Wis.2d 212, 217, 184 N.W.2d 88, 91 (1977). The burden is on RVDH and Tissue Tech, the dilatory parties, to show the presence of "excusable neglect." See *Martin*, 117 Wis.2d at 443 (Ct. App. 1984).

The RVDH Affidavit attempts to deflect the Defendants' own carelessness by alleging that Platkowski has been sending correspondence to a firm that no longer represents either RVDH or Tissue Tech. (4/12/17 RVDH Aff. ¶5). But even that allegation, which Platkowski

contests, does not deny that both RVDH and Tissue Tech were properly served with the Amended Summons and Complaint. Nor does the allegation offer any explanation or excuse for why RVDH and Tissue Tech did not file a timely Answer.

Given the high standard of proof required to show “excusable neglect,” and given that the RVDH Affidavit lacks of any argument in support of excusable neglect, the court should not entertain enlarging the time frame for the Defendants to answer the First Amended Complaint at this stage of the proceedings.

IV. RVDH, A NONLAWYER, CANNOT FILE ANSWER ON BEHALF OF TISSUE TECH, NOR CAN HIS ANSWER SERVE AS AN ANSWER FOR A CO-DEFENDANT.

To the best of the undersigned’s knowledge, RVDH is not licensed to practice law in the State of Wisconsin. The RVDH Affidavit impliedly admits as much, stating that RVDH is acting “prose” [sic] in this matter. (4/12/17 RVDH Aff. ¶5).

An answer filed by a non-lawyer representing a corporation is insufficient to prevent entry of default judgment. *Carmain v. Affiliated Capital Corp.*, 2002 WI App 271, ¶21, 258 Wis. 2d 378, 389, 654 N.W.2d 265, 270 (Ct. App. 2002). It is insufficient for another party to deny liability on behalf of a non-answering defendant. *Id.* Accordingly, in no event can the RVDH Affidavit constitute an answer on behalf of Tissue Tech. Tissue Tech has yet to file an Answer, more than six months after its initial deadline to file an Answer to the First Amended Complaint.

SUMMARY

WHEREFORE, Platkowski respectfully requests that the Court rule that the RVDH does not constitute a valid Answer to the Complaint by either RVDH or Tissue Tech, and grant the Motion for Default Judgment filed on March 22, 2017.

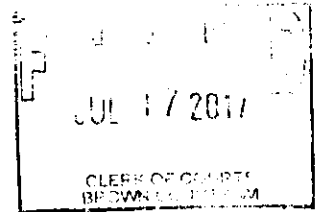
Dated this 14th day of July, 2017.

LAW FIRM OF CONWAY, OLEJNICZAK & JERRY, S.C.
Attorneys for Plaintiff

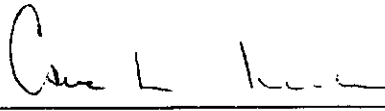
By: _____

Michele M. McKinnon
State Bar No. 1041053

POST OFFICE ADDRESS:
231 South Adams Street
P.O. Box 23200
Green Bay, WI 54305-3200
(920) 437-0476
2630693



The undersigned certifies that a true copy of the within was served by mail upon all attorneys/parties of record pursuant to Wis. Stat. Sec. 801.14, this 14th day of July, 2017.

 7/14/17

Cara L. Lukasik