

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Christine M. Arguello**

Civil Action No. 10-cv-01106-CMA-MEH

THOMAS STICH,

Plaintiff,

v.

BAC HOME LOANS SERVICING, LP,

Defendant.

ORDER DENYING MOTION TO ENTER THE DEFENDANT'S DEFAULT

This matter is before the Court on Plaintiff Thomas Stich's Motion to Enter the Defendant's Default, which was filed on April 27, 2011. (Doc. # 38.) Defendant BAC Home Loans Serving, LP ("BAC Home Loans") promptly responded on April 28 (Doc. # 39) and filed its Answer to the Complaint (Doc. # 40). For the reasons discussed below, Plaintiff's Motion is denied.

I. BACKGROUND

On May 12, 2010, Plaintiff Thomas Stich and former Plaintiff Icon Home Health, LLC filed a Complaint asserting the following five claims against Defendant:

- (1) willful violation of the Fair Credit Reporting Act ("FCRA"), 15 U.S.C. § 1681s(b);
- (2) negligent violation of the FCRA, 15 U.S.C. § 1681s(b); (3) outrageous conduct;
- (4) disparagement; and (5) preliminary injunctive relief. On July 26, 2010, Defendant filed a Motion to Dismiss. (Doc. # 15.) On March 29, 2011, the Court granted in part

and denied in part the Motion to Dismiss. (Doc. # 33.) Specifically, the Court dismissed Icon Home Health from this action, dismissed in part Plaintiffs first and second claims for violations of the Fair Credit Reporting Act ("FCRA") to the extent that they concern Defendant's reports about the timeliness of Mr. Stich's September-December 2009 payments and to the extent they are premised on business-related damages, and dismissed the claim for preliminary injunctive relief.

II. PLAINTIFF'S MOTION TO ENTER THE DEFENDANT'S DEFAULT

Upon review of the parties' briefs, it is apparent that the instant Motion was filed as a result of a significant failure of communication between the parties' attorneys and Plaintiff's counsel's failure to confer in good faith with opposing counsel as required under D.C.COLO.LCivR 7.1. In support of the instant Motion, Plaintiff's counsel asserts that, pursuant to the Fed. R. Civ. P. 6 and 12, Defendant's answer to Plaintiff's remaining claims was due on or before April 15, 2011, but Defendant failed to comply with this deadline. Via e-mail correspondence dated April 21, 2011, Plaintiff's counsel apprised Defendant's counsel of the failure to answer and, in response, Defendant's counsel sought permission to late file the answer. (Doc. # 38-1.) However, in lieu of responding to opposing counsel's request, Plaintiff's counsel filed the instant Motion.

BAC Home Loans' intention of vigorously defending against Plaintiff's claims is apparent from its prompt response to the instant Motion and its filing an Answer. Due to Plaintiff counsel's failure to comply with the Court's Local Rules and confer in good faith

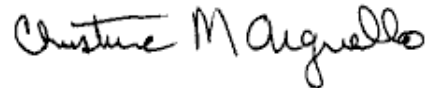
in advance of filing this Motion, the Court finds that denial of Plaintiff's Motion to Enter the Defendant's Default (Doc. # 38) is warranted.

III. CONCLUSION

Accordingly, IT IS ORDERED THAT Plaintiff's Motion to Enter the Defendant's Default (Doc. # 38) is DENIED and Defendant's late-filed Answer to the Complaint (Doc. # 40) is ACCEPTED.

DATED: April 29, 2011

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge