

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

PGT INDUSTRIES, INC.,

Plaintiff,

v.

Case No. 8:12-cv-358-T-33TGW

HARRIS & PRITCHARD
CONTRACTING SERVICES, LLC,
and DAVID M. HARRIS,

Defendants.

ORDER

This matter comes before the Court *sua sponte*. On December 17, 2012, the Honorable Thomas G. Wilson, United States Magistrate Judge, entered an Order granting the Unopposed Motion to Withdraw as Counsel for Defendants (Doc. # 30) filed by Nicole E. Durkin and the Anderson Law Group. (Doc. # 34). Accordingly, Defendants Harris & Pritchard Contracting Services, LLC and David M. Harris are no longer represented by counsel. Additionally, neither defendant has filed a response to Plaintiff PGT Industries, Inc.'s motion for summary judgment. (Doc. # 33). The deadline to do so has now passed.

For the reasons that follow, the Court will allow Harris & Pritchard until and including February 6, 2013, to file a notice of appearance of new counsel. If Harris &

Pritchard fails to so file, this Court will entertain an appropriate motion to strike Harris & Pritchard's responsive pleadings, subjecting Harris & Pritchard to default judgment. Additionally, the Court will allow Harris, as an individual, until and including February 6, 2013, to notify the Court if he intends to proceed in this action *pro se* and to file a response to PGT's motion for summary judgment. If Harris fails to do so, the Court will consider PGT's motion for summary judgment as unopposed. Furthermore, in the event that either Defendant timely retains new counsel, that Defendant has until and including February 20, 2013, to file a response to the motion for summary judgment.

Discussion

On December 1, 2011, PGT filed a complaint in state court against Harris & Pritchard and Harris. (Doc. # 2). The case was removed to this Court on February 21, 2012. (Doc. # 1). An unopposed motion to withdraw as counsel was filed by counsel for both Defendants on November 27, 2012. (Doc. # 30). PGT filed a motion for summary judgment on December 13, 2012. (Doc. # 33). On December 17, 2012, Judge Wilson granted the motion to withdraw as counsel and directed Harris & Pritchard to file a notice of appearance

of new counsel within thirty days. (Doc. # 34). Judge Wilson cautioned Harris & Pritchard that "a corporation must be represented by counsel and cannot appear *pro se*." (Id. at 1). Neither Harris & Pritchard nor Harris has filed a notice of appearance of new counsel or a response to PGT's motion for summary judgment.

Pursuant to Middle District of Florida Local Rule 2.03(e), "A corporation may appear and be heard only through counsel admitted to practice in the Court." Further, a long line of cases maintains that corporations may not appear *pro se* in this Court. See Palazzo v. Gulf Oil Corp., 764 F.2d 1381, 1385 (11th Cir. 1985) ("The rule is well established that a corporation is an artificial entity that can act only through agents, cannot appear *pro se*, and must be represented by counsel."); Textron Fin. Corp. v. RV Having Fun Yet, Inc., No. 3:09-cv-2-J-34TEM, 2010 WL 1038503, at *6 (M.D. Fla. Mar. 19, 2010) ("A corporation's financial constraints do not excuse the requirement that it have legal representation in Court proceedings."); United States v. Hagerman, 545 F.3d 579, 581-82 (7th Cir. 2008) ("*Pro se* litigation is a burden on the judiciary, and the burden is not to be borne when the litigant has chosen to do business in entity form. He must

take the burdens with the benefits.") (internal citations omitted).

Notwithstanding the cases cited above, the Court acknowledges that the parties are, of course, always free to resolve their dispute without legal representation through alternative means outside the Court's province. However, if Harris & Pritchard intends to continue to litigate in this Court, it must have legal representation. In the interests of fairness, the Court will allow Harris & Pritchard until and including February 6, 2013, to hire an attorney. However, if a notice of appearance of counsel is not filed on behalf of Harris & Pritchard on or before February 6, 2013, Harris & Pritchard's responsive pleadings will be subject to being stricken upon the filing of an appropriate motion. Thereafter, Harris & Pritchard will be poised for the entry of default against it.

Furthermore, neither Harris & Pritchard nor Harris has filed a response to PGT's motion for summary judgment. The deadline for filing such responses has elapsed. In the event that Harris & Pritchard timely retains new counsel, Harris & Pritchard is directed to file a response to the motion for summary judgment on or before February 20, 2013.

As an individual, Defendant Harris has every right to represent himself in this action. 28 U.S.C. § 1654. However, Harris is directed to inform the Court if he intends to proceed in this action *pro se* or to file a notice of appearance of new counsel on or before February 6, 2013. If Harris intends to proceed in this action *pro se*, he is directed to file a response to PGT's motion for summary judgment on or before February 6, 2013. If Harris fails to so file, the Court will consider PGT's motion for summary judgment as unopposed. If Harris timely retains new counsel, he is directed to file a response to the motion for summary judgment on or before February 20, 2013.

Accordingly, it is

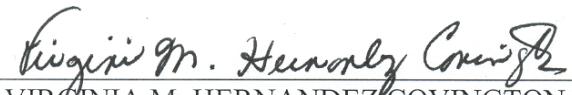
ORDERED, ADJUDGED, and DECREED:

- (1) Defendant Harris & Pritchard Contracting Services, LLC has until and including February 6, 2013, to retain new counsel. In the event that new counsel is retained, Harris & Pritchard is directed to file a response to the motion for summary judgment on or before February 20, 2013. Absent a notice of appearance of counsel filed on behalf of Harris & Pritchard by February 6, 2013, this Court will entertain an appropriate motion to strike Harris &

Pritchard's pleadings. Thereafter, Harris & Pritchard will be poised for the entry of default against it.

(2) Defendant David M. Harris has until February 6, 2013, to notify the Court if he intends to proceed in this action *pro se* or to file a notice of appearance of counsel. If he intends to proceed *pro se*, Harris is directed to file a response to Plaintiff PGT Industries, Inc.'s motion for summary judgment by or on February 6, 2013. If Harris fails to so file, the Court will consider PGT's motion for summary judgment as unopposed. In the event that new counsel is retained, Harris is directed to file a response to the motion for summary judgment on or before February 20, 2013.

DONE and **ORDERED** in Chambers, in Tampa, Florida, this 22nd day of January, 2013.



VIRGINIA M. HERNANDEZ COVINGTON
UNITED STATES DISTRICT JUDGE

Copies: All Counsel of Record

Harris & Pritchard Contracting Services, LLC
Mr. David M. Harris
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