

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NEIL J. BARRETT,

Plaintiff,

- against -

D.J. KNIGHT & COMPANY, LTD.
d/b/a DJK, d/b/a DJK RESIDENTIAL,
d/b/a DJ KNIGHT RELOCATION; and
SIRVA RELOCATION LLC,

Defendants.

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SIRVA RELOCATION LLC,

Third-Party Plaintiff,

- against -

CARMINE RUSSO,

Third-Party Defendant.

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DOUGLAS F. EATON, United States Magistrate Judge.

Barrett v. D.J. Knight & Company, Ltd. et al

Doc. 24

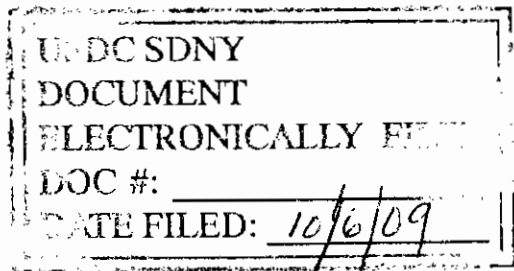
My June 3, 2009 Memorandum and Order stated at ¶¶6-7:

6. On June 1, 2009, SIRVA served and filed a motion asking me to enter default judgment against Mr. Russo "for all or any part of any verdict or judgment the plaintiff may recover against SIRVA together with the costs, disbursements and attorneys' fees incurred in this action." In connection with this motion, I hereby direct as follows:

a. I do not have jurisdiction to decide this potentially dispositive motion, unless Mr. Russo chooses to sign a consent form pursuant to 28 U.S.C. §636(c). I enclose a copy of the form that was signed on December 2, 2008 by Rosario DeVito of the Law Offices of Paul J. Giacomo, Jr. (attorneys for Plaintiff), and by Karen M. Berberich of Dombroff Gilmore Jaques & French (attorneys for SIRVA) and by Judge Kaplan. I have created a line for Mr. Russo to sign if he wishes

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MEMORANDUM AND ORDER



to do so. If Mr. Russo signs the consent form and mails it to me on or before June 15, 2009, then I will rule on SIRVA's motion and on all other aspects of the lawsuit. If Mr. Russo does not sign the consent form on or before June 15, 2009, then SIRVA's motion will be returnable before Judge Kaplan.

b. If Mr. Russo wishes to oppose SIRVA's motion for default judgment, then, **on or before June 15, 2009**, he must mail opposing papers to me or to Judge Kaplan (as the case may be) along with a certificate that Mr. Russo mailed a true copy of his opposing papers to (a) Plaintiff's attorneys at the address shown below, and to (b) SIRVA's attorneys at the address shown below.

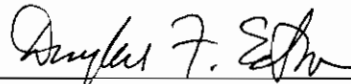
c. Any reply papers must be served and filed on or before June 25, 2009.

7. On June 1, 2009, SIRVA served Plaintiff with a motion asking me to allow SIRVA to amend its Answer to include counterclaims against Plaintiff. If Plaintiff wishes to oppose SIRVA's motion to add counterclaims, then, on or before June 15, 2009, Plaintiff must serve and file opposing papers (via Electronic Case Filing). Any reply papers must be served and filed on or before June 22, 2009 (via ECF). This second motion does not concern Mr. Russo and it will be decided by me.

I turn first to ¶7. **I hereby grant SIRVA's motion (Docket Item #18); accordingly, defendant SIRVA Relocation LLC may serve and file its Amended Answer with counterclaims as a stand-alone document, substantially in the form shown in Exhibit F to Docket Item #18. Plaintiff must serve and file a motion or answer in response to the Counterclaims within 20 days after service.**

I turn next to ¶6. Mr. Russo did not return the §636(c) consent form to me. It appears that he did not mail any papers to Judge Kaplan in opposition to SIRVA's motion for default judgment. Today I am sending Judge Kaplan an e-mail alerting him that SIRVA's motion for default judgment against third-party defendant Carmine Russo (Docket Item #17) is actually returnable before Judge Kaplan, and is ready for decision by Judge Kaplan.

Finally, I direct plaintiff's attorneys Paul J. Giacomo, Jr. and Rosario DeVito to serve and file Notices of Appearances with their updated mailing address, fax number, and e-mail addresses.



DOUGLAS F. EATON
United States Magistrate Judge
500 Pearl Street, Room 1360
New York, NY 10007
Telephone: (212) 805-6175
Fax: (212) 805-6181fax

Dated: New York, New York
October 6, 2009

Copies of this Memorandum and Order are being sent to:

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Brooklyn, NY 11214
(via mail)

Hon. Lewis A. Kaplan
U.S. District Judge
500 Pearl Street, Room 1310
New York, NY 10007
(via inter-office mail)