

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

LUCY AMADOR, a/k/a LUCY TASAMA,

Plaintiff,

ORDER

10-CV-6702L

v.

SERGEANT MICHAEL GALBREATH,

Defendant.

Based on correspondence from plaintiff's counsel that the case has languished and defendant Michael Galbreath ("Galbreath") had failed to actively prosecute the case, this Court issued an order (Dkt. #394) scheduling a trial date status conference for September 25, 2012 at 2 p.m. Defendant Galbreath was ordered to appear in person at the conference. Galbreath was further advised that if he failed to appear, the Court could enter default judgment against him.

On the scheduled date, counsel for plaintiff appeared but the defendant did not appear. Defendant did not communicate with the Court in any way concerning his obligation to appear for the court ordered status conference.

Plaintiff's counsel did advise that he had received an email communication from the defendant indicating that he had neither the means nor "ability to mount a defense" and, therefore, requested the opportunity to discuss settlement of the case. After further discussion in open court, it appears that the defendant has made the same overtures for the past year but has never seriously pursued the matter. Furthermore, it appears that although defendant appeared for one court ordered conference, he has failed to appear for at least three scheduling conferences in addition to the court ordered conference set by this Court for September 25, 2012.

In light of the above, I find that defendant Michael Galbreath has failed to otherwise defend this action and pursuant to FED. R. CIV. P. 55(a), I direct the Clerk to enter default against defendant. Because damages are not for a sum certain, the Court hereby sets a hearing or inquest for damages on January 14, 2013 at 9:30 a.m.

A copy of this order has been mailed by regular and certified mail - return receipt requested, to defendant Michael Galbreath, at 518 Linn Street, Apt. 2, Ithaca, New York 14850-3763.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer". The signature is written in a cursive style with a large, looped initial "D".

DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 26, 2012.