

IN THE UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF VIRGINIA

Alexandria Division

ROBERT HIRSCH and)
ROCCO J. DELEONARDIS,)
)
Plaintiffs,)
)
v.) 1:14-cv-332 (JCC/MSN)
)
ROBERT JOHNSON,)
)
Defendant.)

O R D E R

This breach of contract action stems from a dispute regarding the distribution of settlement proceedings from litigation in the Superior Court of Arizona, Maricopa County, captioned Wanchuk v. PCM Ventures I, LLC, No. CV2007-9523 ("Wanchuk"). The Court previously dismissed the case without prejudice against Defendant Adam Romney; thus, only Defendant Robert Johnson remains. (See June 26, 2014 Mem. Op [Dkt. 17]; Order [Dkt. 18].)

On February 9, 2015, the Clerk of Court entered default as to Defendant Robert Johnson pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. [Dkt. 33.] Plaintiffs moved for entry of default judgment against Defendant Robert Johnson. [Dkt. 22.] The Court referred this motion to United States Magistrate Judge Thomas Rawles Jones, Jr., pursuant to 28

U.S.C. § 636(b)(1)(B), for a Report and Recommendation.

After supplemental briefing [Dkt. 31], Judge Jones filed his Report and Recommendation on May 5, 2015. [Dkt. 35.] Judge Jones recommended¹ that default judgment be entered against Defendant Robert Johnson for the breach of contract claim as to liability only. Judge Jones also recommended that the Court hold an additional hearing to determine the appropriate amount of damages. Judge Jones advised each party of the right to file written objections to this recommendation. To date, the Court has not received any objections, and the time to file has now expired.

Accordingly, having reviewed the pleadings and the Report and Recommendation in this matter, it is hereby ORDERED that:

(1) Judge Jones' Report and Recommendation [Dkt. 35] is ADOPTED IN FULL as the Court's own findings and rulings;

(2) Plaintiffs shall comply with the provisions of Virginia Code § 8.01-296(2)(b)² and file proof of such compliance with the Clerk of Court by no later than July 2, 2015;

¹ This recommendation is made assuming that Plaintiffs first comply with Virginia law by providing Defendant Robert Johnson the necessary notice of pending entry of default judgment.

² Specifically:

[N]ot less than 10 days before judgment by default may be entered, the party causing service or his attorney agent [must] mail[]

(3) Once the Court is satisfied that Plaintiffs have fulfilled the service of process requirements under Virginia law, the Court will enter a subsequent order as necessary; and

(4) The Clerk of Court shall forward this Order to all counsel of record. This matter is continued.

It is so ORDERED.

June 4, 2015
Alexandria, Virginia

/s/
James C. Cacheris
UNITED STATES DISTRICT COURT JUDGE

to the party served a copy of such process and thereafter files in the office of the clerk of the court a certificate of such mailing [T]he mailing of a copy of the pleadings with a notice that the proceedings are pending in the court indicated and that upon the expiration of 10 days after the giving of the notice and the expiration of the statutory period within which to respond, without further notice, the entry of a judgment by default as prayed for in the pleadings may be requested, [and] shall satisfy the mailing requirements of this section and any notice requirement of the Rules of Court.

Va. Code § 8.01-296(2)(b).