

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

T.C. DEVELOPMENT AND DESIGN, INC.,
d/b/a Condor Products,

Plaintiff,

v.

Case No. 07-C-0861

DISCOUNT RAMPS.COM, LLC;
DISCOUNT RAMPS.COM, TRAILER
& SPORTS DIVISION, LLC;
JOEL LEDERHAUSE;
AIMEE LEDERHAUSE;
RAMP CONNECTION, LLC;
JARED NORTHEY,
d/b/a Ramp Connection, and
ROBERT JANESZ,

Defendants.

DECISION AND ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE A
SECOND AMENDED COMPLAINT (DOC. # 78), DENYING WITHOUT PREJUDICE
PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT AGAINST DEFENDANT ROBERT
JANESZ (DOC. # 74), AND SETTING A STATUS CONFERENCE

This case comes before the court on plaintiff's motion for entry of default against defendant Robert Janesz and motion for leave to file a second amended complaint adding defendant ERT Chocks, LLC, and adding dismissed defendant Easy Ride Trailers and Accessories. As an initial matter, the declaration filed in connection with the plaintiff's motion for entry of default against defendant Robert Janesz is insufficient. To comply with the Service Members Civil Relief Act, 50 U.S.C. App. 511 et seq., plaintiff must provide necessary facts to support the attestation. See 50 App. U.S.C. § 521(b)(1)(A). The declaration of plaintiff's attorney is based on her "belief" that the process server had a telephone conversation with someone "believed" to be Janesz and the person believed to be Janesz never mentioned military service. In addition, the process server – not the

declarant - served Shelly Janesz, a sister, who never made mention of military service. That no one brought to the attention of a third party whether defendant Janesz is in military service is insufficient.

In any event, the court will grant plaintiff's motion for leave to file a second amended complaint, which names Robert Janesz as a defendant. Mindful that Rule 15 of the Federal Rules of Civil Procedure requires that leave to amend be granted freely, Rule 21 permits the court to add a party at any time on just terms, and no one has opposed the amendment, the court will allow plaintiff to add ERT Chocks, LLC, and Easy Ride Trailers and Accessories as defendants. Now, therefore,

IT IS ORDERED that plaintiff's motion for entry of default against defendant Robert Janesz is denied without prejudice.

IT IS FURTHER ORDERED that plaintiff's motion for leave to file a second amended complaint is granted. The second amended complaint attached to plaintiff's motion is filed instanter.

IT IS FURTHER ORDERED that the parties shall appear in person for a status conference on February 17, 2011, at 10:30 a.m. in Courtroom 222, at which time the court will address all outstanding matters.

Dated at Milwaukee, Wisconsin, this 31st day of January, 2011.

BY THE COURT

/s/ C. N. Clevert, Jr.

C. N. CLEVERT, JR.

CHIEF U. S. DISTRICT JUDGE