

STATE OF MAINE
CUMBERLAND, ss

JUN 22 8 13 AM '01
SUPERIOR COURT
CIVIL ACTION
DOCKET NO. CV-00-640
MM - CUM - 6/22/0001

CHERYL A. HOLMES, et al.,

Plaintiffs

v.

GERRY CONNELLY, et al.,

Defendants

ORDER ON DEFENDANT
GABRIEL'S MOTION FOR
RECONSIDERATION

The defendant Gabriel's motion to set aside default was denied based on an initial determination that he failed to show a "good excuse for untimeliness in pleading." Thomas v. Thompson, 653 A.2d 417, 419 (Me. 1995); M.R. Civ. P. 55(c). Defendant Gabriel's attorney requested until 12/22/00 to file an answer. See Hirshon Affidavit, Ex. A. Prior to that date, the defendant's attorney requested a dismissal of the complaint against defendant Gabriel. See id., Ex. D. The fact that the plaintiffs' attorney did not respond to that request until their letter of 2/15/01 lends support to Attorney Hirshon's understanding that there was an informal agreement regarding an indefinite extension to serve an answer. See id. ¶ 5 & Ex. E. Although the plaintiffs' attorney's letter of 2/15/01 should have been responded to immediately upon Attorney Hirshon's return from vacation, that delay does not constitute gross neglect. See id. ¶ 11; Thomas, 653 A.2d at 420.

The defendant has shown the existence of a meritorious defense. See Hirshon Affidavit, ¶ 3; Thomas, 653 A.2d at 420. There is no showing of prejudice

to the plaintiffs if the default is set aside. See Erskine v. Comm'r of Corr., 682 A.2d 681, 684 (Me. 1996); Thomas, 653 A.2d at 420.

The entry is

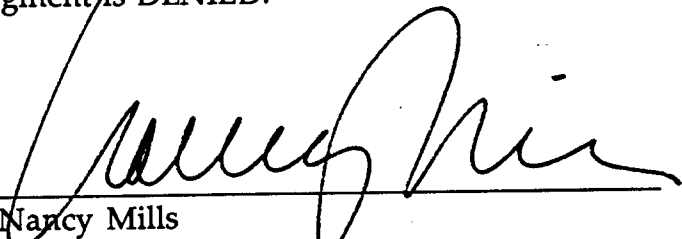
Defendant Gabriel's Motion for Reconsideration is GRANTED.

Defendant Gabriel's Motion to Set Aside Default is GRANTED.

Defendant Gabriel's Motion for Leave to File Late Pleading is GRANTED.

Plaintiffs' Motion for Default Judgment is DENIED.

Date: June 21, 2001



Nancy Mills
Justice, Superior Court

Date Filed 10-27-00 CUMBERLAND Docket No. CV 00-640
County

Action CONTRACT

CHERYL A. HOLMES
CHARLES E. EDWARDS

GERRY CONNELLY
MADISON HEIGHTS ASSOCS., INC.
JAMES CUMMINGS
JAMES E. CUMMINGS, INC. -DISMISSED
JIMINO PLUMBING & HEATING, INC.
WILLIAM GABRIEL
ACRES OF COLORS
RON RILEY

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Date of
Entry

2000

Oct 30

Received 10-27-00: