

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION

Docket No. RE-11-607

STATE OF MAINE
Cumberland, ss, Clerk's Office

TDW-CLC - 6/26/2012

PETER DOREY,

JUN 26 2012

Plaintiff

RECEIVED

v.

ORDER

JAY CUMMINGS et al.,

Defendants

Before the court is plaintiff Peter Dorey's motion for judgment on the pleadings against defendant Jay Cummings. The other defendant in this action is Christopher Cloutier. Cloutier has answered, has asserted a counterclaim against Dorey, and has asserted a cross claim against Cummings.

The gravamen of Dorey's motion is that Cummings, who is representing himself, originally filed a response to the complaint that did not comply with M.R.Civ.P. 8(b) in that it contested Dorey's claims but did not specifically admit or deny the averments in the complaint. Accordingly Dorey argues, judgment should be granted on the pleadings as against Cummings.

In response to Dorey's motion Cummings filed an objection along with an amended answer, "hopefully conforming with Rule 8(B)." Dorey's reply memorandum asserts that the amended answer should be disregarded because Cummings did not file a motion for leave to amend pursuant to Rule 15(a). Dorey does not, however, offer any argument why – if Cummings's response were construed as a motion for leave to amend – that motion should not be granted. Rule 15(a) in fact specifically states that leave to amend shall be freely given when justice so requires.

Dorey is quite right that unrepresented parties are expected to comply with the Rules of Civil Procedure and are not entitled to preferential treatment. At the same time it is not an infrequent occurrence that parties represented by attorneys fail to strictly comply with the Rules of Civil Procedure. If the court would not penalize represented parties for such violations – because there has been no prejudice to their opponents and because the violations do not involve serious procedural defects under the specific circumstances in question – it should not treat unrepresented parties more harshly.

In this case there are at least three reasons why the court concludes that plaintiff's motion for judgment on the pleadings should not be granted:

1. As far as the court can tell from the pleadings, Dorey's claim against Cummings involves the exact same land and the exact same causes of action as Dorey's claim against Cloutier. Indeed, it appears that Cummings sold the land in question to Cloutier. This means that regardless of plaintiff's claim against Cummings, he will have to continue litigating the same issues against Cloutier in order to obtain the relief he seeks. Under these circumstances the court sees very little point in effectively defaulting Cummings, since Cloutier would not be bound by any ruling against Cummings and since Cummings appears likely to constitute a necessary witness in any case.

2. Arguably, since Dorey contends that Cummings's original answer did not constitute a valid pleading, Dorey's proper course of action would have been to move to strike that pleading because it did not comply with Rule 8(b) and then, if that motion had been successful, to seek a default against Cummings. If plaintiff had made such a motion, however, that motion would almost certainly have been granted without prejudice to the prompt filing of an answer that did comply with the rules. The court

cannot see why Dorey's current reliance on the technicalities of Rules 8(b) and 15(a) should yield a different result.¹

3. The relief that plaintiff is seeking, as noted above, is effectively a default judgment against Cummings. However, the Law Court has suggested that, when a party has appeared and is prepared to litigate the issues, only "serious instances of noncompliance with pretrial procedures" should lead to a default. Design Build of Maine v. Paul, 601 A.2d 1089, 1091 (Me. 1992). The situation now before the court does not present a serious instance of noncompliance with pretrial procedures.

At the same time, Cummings should be on notice that he must comply with the Rules of Civil Procedure, that unless he obtains counsel he is likely to be at a serious disadvantage in this case,² and that if any of the other parties to this action can demonstrate in the future any significant procedural defect on Cummings's part, particularly if it results in prejudice to them, the court will apply the rules of civil procedure notwithstanding Cummings's unrepresented status.

The entry shall be:

Plaintiff's motion for judgment on the pleadings against defendant Cummings is denied, and Cummings is granted leave to file his amended answer dated April 4, 2012. The Clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: June 25, 2012



Thomas D. Warren
Justice, Superior Court

¹ The court would reach the same conclusion if Cummings were represented by counsel.

² For instance, the court notes that Cloutier's cross claims seek money damages against Cummings if Dorey prevails as against Cloutier.

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