

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-092138

12/19/2014

COMMISSIONER MARGARET BENNY

CLERK OF THE COURT

T. Haaser

Deputy

VILLAGE AT GRAYHAWK OWNERS
ASSOCIATION

MARK W WALDRON

v.

DALE R GRABOIS

DALE R GRABOIS
19700 N 76TH ST #2173
SCOTTSDALE AZ 85255

MINUTE ENTRY

****RULING****

****Please read closely as there are orders for both Plaintiff and Defendant in the ruling.****

The Court has received Defendant Dale R. Grabois' Notice of Motion and Motion for New Trial; Amendment of Judgment (A.R.C.P. Rule 59(4)(1), as well as Plaintiff's Objection and Response in Opposition to Defendant's Notice of Motion and Motion for New Trial; Amendment of Judgment(A.R.C.P. Rule 59(4)(1). Defendant has requested an oral argument hearing, but the Court has reviewed the motion and response, along with the case file and finds that an oral argument is not necessary.

Upon review and consideration,

IT IS HEREBY ORDERED denying Defendant's request for new trial or amendment of judgment. The Court does not find Defendant's arguments to be supported by the

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-092138

12/19/2014

filings. Defendant was appropriately served and was sent copies of all documents filed by Plaintiff to the correct address. Default was also appropriately entered against Defendant.

However, in reviewing the file in order to rule of the motion and response, Defendant's earlier Notice of Motion and Motion to Dismiss came to the attention of this Court. This motion was denied by Judge Udall and this judicial officer was not aware of the earlier motion at the time she ruled on the Motion for Default Judgment *without hearing*. Under Rule 55(b)(2) of the Arizona Rules of Civil Procedure, if the party against whom judgment by default is sought has appeared in the action, that party...shall be served with written notice of the application for judgment at least three days prior to the hearing on such application. By filing his Notice of Motion and Motion to Dismiss, Defendant appeared in the action for purposes of Rule 55(b)(2) and a default hearing was required. It was not appropriate to proceed without a default hearing.

Therefore, on the Court's own motion,

IT IS HEREBY ORDERED rescinding the default judgment filed on October 13, 2014 and setting a **default hearing for January 7, 2015 at 9:00 a.m. (15 minutes allotted), at the Maricopa County Superior Court, Southeast Facility, 222 E. Javelina Ave., Courtroom 303, Mesa, AZ 85210.**

Although Defendant is endorsed on this written minute entry, in order to fully comply with Rule 55(b)(2),

IT IS FURTHER ORDERED that, at least three days prior to the default hearing, Plaintiff shall serve Defendant with a copy of this minute entry along with a copy of the Motion for Default Judgment, the application and affidavit in support of attorney fees, the statement of costs, all filed on 10/3/2014. This minute entry shall serve as Plaintiff's written notice regarding the hearing date.

Given the timing of the next hearing,

IT IS FURTHER ORDERED that if Plaintiff's attempt to personally serve Defendant at his home at 19700 N. 76th Street, #2173, Scottsdale, AZ 85255 between 7:00 a.m. and 8:00 p.m. is not successful, the process server shall (1) post the required documents at or near the door of the residence and (2) mail an additional set of copies by certified mail to Defendant at the same address. Plaintiff shall bring an affidavit of service as to the effectuated method(s) of service (including a photocopy of the envelope and/or the green card).

As the Court previously stated, the entry of default is appropriate and has been entered. Therefore,

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-092138

12/19/2014

IT IS ORDERED that the only issues for the hearing will be the amount of damages (amount owed), attorneys' fees and court costs.

Further, review of the court's file shows that Defendant did not pay his required filing fee of \$237.00 when he filed his Notice of Motion and Motion to Dismiss. The Clerk of the Court's office should not have accepted his filing without the fee, but did and it was ruled on by the Court. This was an oversight. The filing fee has not been waived.

Therefore,

IT IS ORDERED that Defendant shall pay his filing fee prior to his appearance at the default hearing and shall bring in his receipt to show the Court. Should this be a financial hardship for Defendant, he may file an application for the deferral or waiver of court costs with the Clerk of Court. This must be completed prior to the default hearing.

IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court.

/ s / COMMISSIONER MARGARET BENNY

JUDICIAL OFFICER OF THE SUPERIOR COURT