STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

LEO'S CONEY ISLAND FRANCHISING CO,

Plaintiff,

Case No. 14-140864-CP

v

Hon. Wendy Potts

SHELBY'S CONEY ISLAND, LLC, et al,

Defendants.

_____/

OPINION AND ORDER RE: MOHAMAD DIAB'S AND SHELBY'S CONEY ISLAND, LLC'S MOTION TO SET ASIDE DEFAULTS

At a session of Court
Held in Pontiac, Michigan
On
NOV 03 2014

The matter is before the Court on individual Defendants Mohamad Diab and Shelby's Coney Island, LLC's joint motion to set aside a default entered on June 25, 2014. Plaintiff filed this action on May 16, 2014 seeking injunctive relief for Defendants' purported breach of the parties' franchising agreement. On June 4, 2014, the Court heard Plaintiff's motion for a preliminary injunction and granted Plaintiff the relief sought.

A default can be set aside only if Defendants show good cause and a meritorious defense. MCR 2.603(D)(1). "Good cause" means (1) a substantial irregularity or defect in the proceeding on which the default is based or (2) a reasonable excuse for failure to comply with the requirements that created the default. *Alken-Ziegler, Inc v Waterbury Headers Corp*, 461 Mich 219, 233 (1999). The decision whether to set aside a default is discretionary. *Id* at 227.

Diab and Shelby's Coney claim that the reason they failed to timely answer the complaint is that Diab, who appeared in pro per at the preliminary injunction hearing, received "legal

advice" from both the Court Clerk and Plaintiff's counsel that lead him to believe that no response was necessary. So, neither Diab nor Shelby's Coney filed an answer. Diab and Shelby's Coney also present the Court with an affidavit of meritorious defense essentially stating that Plaintiff breached the parties' agreement first.

Plaintiff responded that counsel in no way directed Diab to not file an answer and notes that the Court's clerks are barred from giving parties legal advice. Diab and Shelby's Coney failed to timely answer the complaint and the Court properly entered a default. Further, Plaintiff argues that Diab's affidavit lacks any factual support that can be reasonably construed as a defense to the complaint and therefore, requests the Court deny the motion.

The Court agrees with Plaintiff that Diab and Shelby's Coney failed to demonstrate entitlement to have the default set aside. The gravamen of the affidavit merely disagrees with the allegations of Plaintiff's complaint without any supporting factual allegations or documentation. Further, although our courts favor resolution of disputes on the merits, see *Marposs Corp v Autocam Corp,* 183 Mich App 166, 170 (1990), the Court's policy is generally against setting aside defaults that have been properly entered. See *Alken-Ziegler, Inc, supra.* Thus, even if the Court were find good cause based on Diab and Shelby's Coney's claim that they relied on alleged oral representations of Plaintiff's counsel and the Court's clerks for their subjective belief that no answer was necessary, the motion still fails because the affidavit fails to demonstrate that Defendants had a meritorious defense to the complaint.

For all of these reasons, the Court DENIES the motion to set aside the default.

IT IS SO ORDERED.

Dated: NOV 0 3 2014

Hon. Wendy Potts