

STATE OF MICHIGAN

IN THE CIRCUIT COURT FOR THE COUNTY OF OAKLAND

DU-ALL CONTRACTING, INC,

Plaintiff,

Case No. 13-134884-CK

v

Hon. Wendy Potts

BRANDON RATLIFF,

Defendant.

SUPPLEMENTAL OPINION AND ORDER RE:
DEFENDANT RATLIFF'S MOTION FOR RECONSIDERATION OF THE COURT'S
ORDER DENYING DEFENDANT'S MOTION TO SET ASIDE DEFAULT AND
PRELIMINARY INJUNCTION

At a session of Court
Held in Pontiac, Michigan

On
FEB 20 2014

Defendant Brandon Ratliff moved the Court to reconsider its decision denying his motion to set aside the default entered against him. The Court agreed to reconsider the decision and allowed Plaintiff Du-All Contracting, Inc. to file a response to the reconsideration motion. For the reasons explained below, the Court sets aside the default and will allow the case to proceed on the merits.

To demonstrate grounds for setting aside a default, Ratliff must 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.

Ratliff asserts that the Court erred in concluding that he failed to demonstrate good cause to set aside the default citing *McDonald v Kersten*, 24 Mich App 681; 180 NW2d 810 (1970). In *McDonald*, the defendants appeared in pro per at a hearing on a temporary restraining order and informed the court that they would be obtaining counsel. However, the defendants did not timely file an answer to the complaint and did not obtain counsel until after the default was entered. The Court of Appeals concluded that the defendants demonstrated a reasonable excuse for failing to timely answer because the delay “may have been attributable to a layman's impression that by appearing in court they had appeared . . .” *Id* at 688.

Du-All contends, and the Court agrees, that the facts of this case are distinguishable from *McDonald* because Ratliff did not appear or otherwise indicate an intent to defend against this action before the default was entered. However, the *McDonald* decision relied on an earlier Supreme Court opinion that is factually analogous to this case. In *Bednarsh v Winshall*, 364 Mich 113; 110 NW2d 729 (1961), the defendant gave the summons and complaint to his attorney, who could not represent him because he had also represented the plaintiff. The attorney turned the pleadings over to another lawyer, however, the new attorney did not receive them until one day after the default judgment was entered. The Supreme Court concluded that good cause was shown because there was confusion over the handling of the defense despite the fact that the defendant “acted with reasonable care and dispatch.” *Id* at 114.

The *Bednarsh* decision instructs that a layperson’s confusion over whether he is represented by counsel can be a reasonable excuse for failing to timely answer a complaint. Ratliff was served with the complaint on July 18, 2013, and he asserts in an affidavit that he met with attorney Elmer Roller on July 19. He claims he was under the mistaken belief that Mr. Roller would represent him and did not learn that Roller was unable to do so until after the default was entered. Like the defendant in *Bednarsh*, Ratliff appears to have acted reasonably

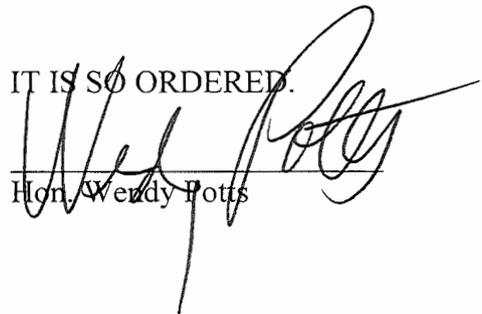
and promptly in attempting to obtain counsel and, due to confusion over his representation, failed to timely answer. Thus, Ratliff has met the good cause element by showing a reasonable excuse for failing to timely answer the complaint.

As for the meritorious defense, Ratliff claims that the Court erred in considering only his defense to the claim for violation of his noncompetition agreement and not addressing his meritorious defenses to the remaining claims. Ratliff notes that Du-All alleged eleven claims against him and asserts that only three of those claims involved the noncompetition agreement. In particular, Ratliff's affidavit asserts facts that, if proven, would demonstrate a meritorious defense to Du-All's claims that he violated his confidentiality agreement or converted Du-All's confidential information, tortiously interfered with Du-All's business expectancy, defrauded Du-All, defamed Du-All, was unjustly enriched, or intentionally inflicted emotional distress. Because Ratliff's affidavit asserts defenses to most, if not all, of Du-All's claims, he satisfied the meritorious defense element of the claim.

For all of these reasons, the Court sets aside the default. Ratliff must answer the complaint within 21 days of the date of this order. The Court adjourns the February 28 case management conference to MARCH 28, 2014 @ 8:30 AM

Dated: **FEB 20 2014**

IT IS SO ORDERED.


Hon. Wendy Potts