

STATE OF MAINE
CUMBERLAND, ss.

SUPERIOR COURT
CIVIL ACTION
Docket No. CV-14-252

TDW-CUM-08-27-14

GROUND BREAKING EXCAVATION,

Plaintiff

v.

ORDER

STATE OF MAINE
Cumberland, ss, Clerk's Office

JUSTIN FLETCHER, et al,

AUG 27 2014

Defendants

RECEIVED

Before the court is a request by defendant Justin Fletcher for the entry of default against plaintiff Ground Breaking Excavation for not filing an timely reply to the counterclaims.

For its part, Ground Breaking Excavation has filed a response to the request for a default and a belated and cursory answer to the counterclaims.

There are two problems with the request for a default. The first is that the request for a default has been made by defendant Justin Fletcher but the counterclaims were filed on behalf of Justin Fletcher Inc.


The second is that entering a default on the counterclaims would result in a finding that Ground Breaking Excavation breached its contractual obligations, while Ground Breaking Excavation is alleging in its complaint – on which no default can be entered – that it was the defendants who breached their contractual obligations. The court cannot reconcile the survival of Ground Breaking Excavations' contract claims with a default on the counterclaims. 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). This does not involve a serious instance of noncompliance.

At the same time Ground Breaking Excavation's two-sentence response to the counterclaims does not qualify as a reply to the counterclaims under the pleading rules. Ground Breaking Excavation shall therefore serve file a paragraph-by-paragraph response to the counterclaims and shall assert any affirmative defenses to the counterclaims on or before September 15, 2014. See M.R.Civ.P. 8(b).

The entry shall be:

Defendant Justin Fletcher's request for entry of default is denied. Procedural order entered. The clerk is directed to incorporate this order in the docket by reference pursuant to Rule 79(a).

Dated: August 27 2014



Thomas D. Warren
Justice, Superior Court

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