

MISSOURI CIRCUIT COURT  
TWENTY-SECOND JUDICIAL CIRCUIT  
(St. Louis City)

MARK TWAIN FINANCIAL GROUP, LLC  
ASSIGNEE OF WELLS FARGO BANK, N.A.

FILED  
NOV 14 2016  
22<sup>ND</sup> JUDICIAL CIRCUIT  
CLERK'S OFFICE  
BY \_\_\_\_\_ DEPUTY

VS

CASE NO. [REDACTED] DIVISION 28 November 10, 2016

**MEMORANDUM TO FILE**  
**And**  
**ORDER**

This matter is before the Court on various Motions filed by Defendant [REDACTED] and an attempt to clarify the record in this case.

**Procedural History**

This matter was originally filed in the Circuit Court of St. Louis County (Cause No. [REDACTED]). Plaintiff filed a Motion to Transfer Venue, and this matter was transferred to this Court. On March 20, 2013, Defendant [REDACTED] was personally served with a copy of the Summons and Petition. The summons indicated the first appearance date as April 25, 2013.

On or about April 25, 2013, this matter was called. Plaintiff appeared by counsel, Anthony Reiner. Defendant appeared pro se. On said date, a Memorandum was filed, for Defendant [REDACTED], requesting a continuance until May 23, 2013 for discovery. Said Memorandum is signed by Plaintiff's counsel. Further, there's a signed notation on the bottom of the Memorandum by the Deputy Sheriff indicating that the Defendant was in Court and left the courtroom without signing this memorandum.

Also on April 25, 2013, Defendant [REDACTED] filed a document requesting a dismissal of the case. The Court takes said document as a Motion to Dismiss. Defendant stated grounds for dismissal as the following: "this account is no longer with Wells Fargo Bank N.A. This account was bought from Wells Fargo Bank N.A by Mark Twain Financial Group, LLC. . ." There is no indication in the record that Defendant called up her Motion to Dismiss for hearing.

On or about April 30, 2013, Plaintiff's counsel forwarded a letter to the Defendant advising as to the continuance date, and including therein the Memorandum of April 25, 2013. In Plaintiff counsel's letter, Defendant [REDACTED] was notified again of the May 23, 2013 court date, and was of the potential consequences of a failure to appear in Court on said date.

On or about May 23, 2013, this matter was called. Plaintiff appeared by counsel. Defendant, after being called three times, failed to appear. The Court found Defendant [REDACTED] in default. Based upon the pleadings, evidence and proofs, the Court issued a Judgment in Default against Defendant [REDACTED].

On or about January 15, 2014, Plaintiff commenced execution of the judgment, seeking garnishment of Defendant [REDACTED]'s bank account. A writ of Execution was issued March 10, 2014, with a Return date of April 9, 2014.

On or about October 25, 2016, Defendant [REDACTED] filed a second Motion to Dismiss. Therein Defendant [REDACTED] requested the Court to "remove judgement and real estate lien". In that Defendant [REDACTED] requested the Court to "remove (the) judgment", the Court takes said Motion as a Motion to Set Aside the Default Judgment. Further therein, Defendant indicated that on April 25, 2013, there was a "false written statement of a continuance", and that she had requested a Dismissal on that date. At this time, Defendant noticed up her Motion to Dismiss for November 3, 2016.

On or about November 3, 2016, this matter was called for hearing on Defendant's Motion. Plaintiff appeared by counsel and Defendant [REDACTED] appeared. Argument was presented. At the hearing, Defendant argued as presented in her Motion. Plaintiff's counsel rested on the pleadings and documents in the Court file, stating that Defendant had been granted proper notice to appear on May 23, 2013 (through the Court and a follow up letter by Plaintiff's counsel) and Defendant simply failed to appear, and therefor such Default Judgment was properly issued against the Defendant. Further, Plaintiff's counsel argued, assuming Defendant [REDACTED] had filed a Motion to Set Aside a Default Judgment under Rule 74.05 (d) of Civil Procedure, Defendant's Motion was filed untimely, more than 30 days after the May 23, 2013. Further, Plaintiff argued that Defendant [REDACTED]'s Motion failed to set forth facts constituting a meritorious defense and good cause. The Defendant Sheriff who was present on the day the Defendant fled the Court without signing the continuance memo, and noted this occurrence on the memo, testified to that fact again at the hearing.

The Court agreed with Plaintiff. The Court found Defendant had not presented a meritorious defense to Plaintiff's underlying claim (a suit on a credit card debt). Further, the Court did not find good cause. There was no evidence in the record of a mistake or conduct that intentionally or was recklessly done to impede the process. In fact, the Court found just the opposite: Plaintiff's counsel letter to Defendant reminding her of the court date was done to remove any confusion about the court date, and inform her of the consequences of failing to appear. Counsel's actions promoted rather than impeded the court process. Defendant Motion to Dismiss (Motion to Set Aside the Default Judgment) was called, heard and denied.

At the conclusion of the November 3<sup>rd</sup> hearing, Defendant [REDACTED] filed a "Motion to Review and Reconsider Decision". Therein Defendant maintained once again that there was a judgment under a false statement, and that it was not necessary for her to sign a statement of false testimony. Also, Defendant maintained that Plaintiff is not the original account holder and that she never held an account with their company. The Court notes for the record, that the party in interest is "Mark Twain Financial Group, LLC, Assignee of Wells Fargo Bank, N.A.". At that time, Defendant noticed up her Motion to Review and Reconsider for November 10, 2016.

On today's date, this matter was called for hearing on Defendant's Motion to Review and Reconsider. Plaintiff appeared by counsel and Defendant [REDACTED] appeared. Argument was presented. At the hearing, Defendant stated she was proceeding under Rule 74.06(b) (1) surprise; and 74.06(b)(3) the judgment is irregular. In support of Rule 74.06(b) (1) and (b) (3), Defendant offered the following:

1. She never had an account with Mark Twain Financial Group LLC, and therefore, is not indebted to Mark Twain Financial Group LLC. However,

Defendant did admit that she had an account with the assignee Wells Fargo Bank, N.A. in 2007.

2. On April 23, 2014, she never requested a continuance, rather she filed a Motion to Dismiss, and simply wanted the Court to dismiss the case against based on her statement that she was not indebted to Mark Twain Financial Group, LLC.

In response to Defendant [REDACTED]'s argument, Plaintiff counsel maintained that Defendant's Motion should be dismissed pursuant to Rule 74.05(d). Again, Plaintiff argued that Defendant's Motion failed to state facts constituting a meritorious defense nor good cause for the judgment to be set aside. Moreover, Plaintiff argued that Defendant motion was not timely filed, in that it was filed more than one year after the default judgment was entered. Further, Plaintiff argued that Defendant's Motion was not filed within a reasonable time, in that it was filed more than three years after the entry of the judgment.

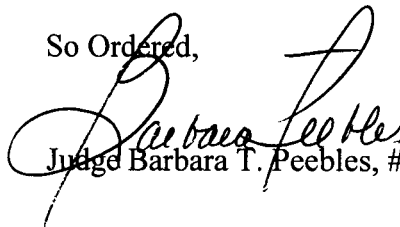
The Court agrees. There has been no surprise to the Defendant, nor is the Default Judgement irregular in any form. First, Defendant has maintained the same defenses throughout, none of which with any merit. The Court believes Defendant [REDACTED] may not understand Plaintiff Mark Twain Financial Group LLC's position as the assignee of the debt of Wells Fargo Bank, N.A. Defendant admits she owes a debt to the original debt holder, therefor, she has not shown a defense to Plaintiff's claim that she does owe the debt.

Second, Defendant [REDACTED] has not shown any good cause as to why the Default Judgment should be set aside. As the Court has stated above, there is no evidence in the record of a mistake or conduct that was recklessly done to impede the judicial process.

Third, Defendant's Motion was filed more than three years after the original judgment. The Court finds this lapse of time to be unreasonable. The Court finds that the Defendant did not avail herself of the Court when she failed to appear on May 23, 2013, after proper notice. In today's hearing, Defendant argued to the Court that she assumed the matter was concluded on April 23, 2013, when she and Plaintiff's attorney could not agree on a resolution and she filed a motion asking the court to dismiss the case. In her words, she "believed everything was over at the point." The Court finds her assertions to be extremely disingenuous.

Having heard the above, Defendant's Motion to Review and Reconsider is hereby denied, in that the Court no longer has jurisdiction over this matter pursuant to Rule 74.05(d).

So Ordered,

  
Judge Barbara T. Peebles, #36220

**SO ORDERED:**

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Barbara T. Peebles, 36220, Judge