

DANIEL M. HERRIGAN

2010 FEB 23 PM 3:35

SUMMIT COUNTY
CLERK OF COURTS

IN THE COURT OF COMMON PLEAS
SUMMIT COUNTY, OHIO

CHRISTINA M. BRASHEAR,)	CASE NO.: CV 2008 04 2729
)	
Plaintiff,)	JUDGE CALLAHAN
)	
v.)	
)	<u>ORDER</u>
ELLORA'S CAVE PUBLISHING, INC., et al.,)	
)	
Defendants.)	

This matter came before the Court for a final pretrial scheduled for February 23, 2010 at 8:45 a.m. Counsel for Defendants, Attorney Krueger, and the Defendants, Tina Engler and Patricia Marks, did not appear for the final pretrial. The Court called the phone number on record for Attorney Krueger, but received an answering machine upon which the Court left a message. The Court waited sixty-five minutes before proceeding with the final pretrial. Attorney Krueger did not appear or return the Court's phone message prior to conducting the final pretrial at 9:50 a.m. Nor did the Court receive any telephone messages or motions from Attorney Krueger at anytime prior to the scheduled final pretrial requesting a continuance. Plaintiff orally moved the Court for default judgment based upon Attorney Krueger's and Defendants Engler and Marks' failure to appear at the final pretrial in contravention to the Court's September 21, 2009 Order-Modified Case Management Schedule.

By way of history, this is a highly contested breach of contract matter between shareholders of multiple businesses. Discovery disputes have plagued the case from its onset

and the Court has worked diligently to resolve the various discovery disputes. Defendants retained new counsel, Attorney Krueger, who entered an appearance on September 17, 2009. Mr. Krueger attended a final pretrial on September 18, 2009 on behalf of the Defendants. During the September 18, 2009 hearing, the Court addressed outstanding discovery concerns and set a new trial schedule in light of new counsel being retained and the incomplete status of discovery. The new final pretrial and jury trial dates, along with discovery and expert witness deadlines were selected with the consent of counsel in relation to the preparation needed for trial and counsel's schedules.

All of the dates were memorialized in the Court's September 21, 2009 Order-Modified Case Management Schedule. Moreover, this Order was mailed specifically to Attorney Krueger and Defendants Tina Engler and Patricia Marks. None of these mailings were returned from the post office as being undeliverable.

The September 21, 2009 Order-Modified Case Management Schedule directed counsel of record and their clients to be in attendance at the final pretrial on February 23, 2010 at 8:45 a.m. and further contained a warning that "[f]ailure to comply with any orders of this Court may result in sanctions being imposed, including adverse judgment for failure to prosecute or defend." The final pretrial in this matter was held on February 23, 2010 at 9:50 a.m., sixty-five minutes after the scheduled start time. The purpose of the final pretrial was to address settlement status and/or outstanding issues in preparation for the jury trial to be held in two weeks. Thus, it was imperative that counsel and clients were in attendance at the final pretrial in order to engage in meaningful discussions. Attorney Krueger and his clients, Defendants Engler and Marks, however were not present and did not respond to the Court's telephone inquiry as to

their whereabouts. The Court was unable to evaluate the status of the case and prepare for the approaching jury trial. Attorney Kreuger and Defendants Engler and Marks are in violation of the Court's September 21, 2009 Order by failing to appear at the final pretrial and are subject to adverse judgment.¹

Based on the foregoing, Plaintiff's oral motion for default judgment as to all counts of her Complaint and against all Defendants is GRANTED thereby rendering the March 8, 2010 Jury Trial moot and canceled. A **damages hearing** will be held on **May 7, 2010 at 8:30 a.m.** **Immediately following the damages hearing**, the Court will conduct a **hearing** regarding the **attorney fees** award previously granted on November 25, 2009.

IT IS SO ORDERED.


JUDGE LYNNE S. CALLAHAN

cc: Attorney Irving B. Sugarman
Attorney Jeffrey W. Krueger

¹ The Court notes that Plaintiff filed a Second Motion for Imposition of Sanctions, Including Default Judgment Against All Defendants on February 22, 2010 at 3:18 p.m. This motion was again based on discovery disputes. The Court, however, did not consider any of the arguments set forth in the Plaintiff's Motion in granting default judgment.