

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

GRISEL ALONSO, as Receiver for  
Elm Tree Investment Advisors, LLC,  
Elm Tree Investment Fund, LP,  
Elm Tree 'e'conomy Fund, LP,  
Elm Tree Motion Opportunity, LP, and  
Etopia, LP

Case No. 17-cv-61390-Altonaga/Goodman

Proceeding Ancillary to  
No. 15-CV-60082-Dimitrouleas/Snow

Plaintiff,

v.

VICTOR ELMALEH, an individual,  
MERCEDES ELMALEH, an individual,  
1925333 ONTARIO INC. d/b/a CLEARTECH  
COMPUTING SYSTEM, a Canadian corporation,  
ENGAGE MARKETING GROUP, INC., a  
Canadian corporation, and M3 DESIGNS, LP a  
Delaware partnership,

Defendants.

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**PLAINTIFF'S NOTICE REGARDING CONTACT WITH DEFENDANTS**

Grisel Alonso, not individually but solely in her capacity as the Receiver appointed over Elm Tree Investment Advisors, LLC, Elm Tree Investment Fund, LP, Elm Tree 'e'conomy Fund, LP, Elm Tree Motion Opportunity, LP, and Etopia LP ("Plaintiff"), by and through undersigned counsel, respectfully submits this Notice Regarding Contact with Defendants:

1. Plaintiff filed her Complaint on July 12, 2017. [D.E. 1].
2. On July 22, 2017, Plaintiff served Defendants with copies of the Complaint. [D.E. 9-13].
3. On August 7, 2017, the Court entered an order requiring Defendants to submit a single combined response or separate answers by August 14, 2017. [D.E. 15].

4. That same day, August 7, 2017, Defendant Victor Elmaleh contacted undersigned counsel requesting a three-week extension of time to obtain counsel and to respond to the Complaint. A copy of the email chain is attached as **Exhibit A**.

5. Undersigned counsel responded that the Receiver did not oppose an extension, but that Defendants would need to file a request for enlargement of time to respond or answer with the Court. *Id.* Mr. Elmaleh indicated that he would file such a motion on Defendants' behalf. *Id.*

6. The deadline for Defendants' response or answers to the Complaint came and went, and Defendants never filed a request for extension of time.

7. On August 16, 2017, the Court entered an order directing Plaintiff to file motions for clerk's default against the Defendants. [D.E. 16].

8. On August 17, 2017, counsel for Plaintiff sent Mr. Elmaleh a copy of the Court's August 16 Order and reiterated that only the Court had authority to enlarge the amount of time for Defendants to respond to or answer the Complaint. *See Ex. A.*

9. Mr. Elmaleh responded that a motion for enlargement of time had been filed, but for various reasons, including delays in communicating with Judge Dimitrouleas' chambers (as opposed to Judge Altonaga's) and dealing with Federal Express mailing issues, the motion was not docketed. *Id.*

10. Given that to date no motion or request for enlargement of time has been docketed in this action or provided to undersigned counsel, Plaintiff filed motions for entry of clerk's default against the Defendants on August 23, 2017 in accordance with the Court's August 16, 2017 Order. [D.E. 17-21].

11. In an abundance of caution, Plaintiff files this Notice to bring her counsel's communications with Defendants to the Court's attention.

**BROAD AND CASSEL**

Attorneys for Receiver  
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2 S. Biscayne Boulevard  
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By: s/Daniel S. Newman

Daniel S. Newman, P.A.  
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Christopher Cavallo, Esq.  
Florida Bar No. 0092305  
ccavallo@broadandcassel.com

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on August 23, 2017, a true and correct copy of the foregoing was served via electronic transmission on all counsel or parties of record, and mailed to the following

Defendants:

Victor Elmaleh  
59 McCabe Crescent  
Thornhill, Ontario Canada L4J 2S6

Mercedes Elmaleh  
59 McCabe Crescent  
Thornhill, Ontario Canada L4J 2S6

1925333 Ontario, Inc. d/b/a  
Cleartech Computing System  
59 McCabe Crescent  
Thornhill, Ontario Canada L4J 2S6

Engage Marketing Group, Inc.  
59 McCabe Crescent  
Thornhill, Ontario Canada L4J 2S6

M3 Designs, LP  
59 McCabe Crescent  
Thornhill, Ontario Canada L4J 2S6

By: s/Daniel S. Newman

Daniel S. Newman, P.A.

## Christopher C. Cavallo

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**From:** Victor Elmaleh <velmaleh1944@gmail.com>  
**Sent:** Wednesday, August 23, 2017 2:53 PM  
**To:** Daniel Newman  
**Cc:** Christopher C. Cavallo  
**Subject:** Re: Victor Elmaleh and Mercedes Elmaleh

Ok Thank you. I have confirmed that the courts have received the document we sent by Fedex.

Thank you,

Victor

On 23 August 2017 at 14:41, Daniel Newman <[dnewman@broadandcassel.com](mailto:dnewman@broadandcassel.com)> wrote:

Mr. Elmaleh:

The Order I sent you clearly indicated that it was signed by Judge Altonaga. The issue rests with the Court – not the Receiver. That is why I suggest you take up the issue immediately with the Court. I cannot otherwise advise you how to proceed.

Best regards,

Dan Newman

**From:** Victor Elmaleh [mailto:[velmaleh1944@gmail.com](mailto:velmaleh1944@gmail.com)]  
**Sent:** Wednesday, August 23, 2017 2:27 PM

**To:** Daniel Newman <[dnewman@broadandcassel.com](mailto:dnewman@broadandcassel.com)>  
**Cc:** Christopher C. Cavallo <[ccavallo@broadandcassel.com](mailto:ccavallo@broadandcassel.com)>  
**Subject:** Re: Victor Elmaleh and Mercedes Elmaleh

Mr. Newman, I understand your position but please look at the very first email I sent you. I stated that we would be calling Judge Dimitrouleas office, which we did. You did not correct me and state that the case was with Judge Altonaga in Miami-Dade. I am sure this was an oversight but we wasted a lot of time before finding out that the case was in Miami.

In fact, on the Original Claim we received, it clearly stated No.15-CV-60082-Dimitrouleas/Snow. We assumed that the case was with Judge Dimitroulos like all other previous filings in Broward County.

If necessary, I will send another notice/motion to the court.

Thank you,

Victor Elmaleh

On 23 August 2017 at 13:50, Daniel Newman <[dnewman@broadandcassel.com](mailto:dnewman@broadandcassel.com)> wrote:

Mr. Elmaleh:

You will need to address this issue with the Court and I suggest you do so today. As I told you, the Receiver was required by Court order to file motions to vacate by today and has done so.

I told you on August 7, 2017, when you initially emailed me, that the Receiver would not oppose a motion to enlarge time, but that you would need to seek relief from the Court. I provided you with the Court's Order dated August 16<sup>th</sup> so that you could take whatever action you deemed appropriate. We checked the docket and waited an additional day to file the motions to determine if any motion had been filed. The document reflected no filing. Further, we still have not been provided with the motion you say was prepared.

Best regards,

Dan Newman

**From:** Victor Elmaleh [mailto:[velmaleh1944@gmail.com](mailto:velmaleh1944@gmail.com)]  
**Sent:** Wednesday, August 23, 2017 1:28 PM  
**To:** Daniel Newman <[dnewman@broadandcassel.com](mailto:dnewman@broadandcassel.com)>  
**Cc:** Christopher C. Cavallo <[ccavallo@broadandcassel.com](mailto:ccavallo@broadandcassel.com)>

**Subject:** Re: Victor Elmaleh and Mercedes Elmaleh

Hello Mr.Newman, as you are aware we are arranging for council to defend our case and we are obviously novices. We had no idea that this case was filed in Miami as opposed to Broward County, so this caused significant delays. In addition, the package sent by overnight courier through Fedex, had been misplaced.

Fedex really messed up. Nevertheless, the package did make it to the court house today and was signed by M. Mathew at 10.20 am.

If you like, you can confirm by checking the Fedex Tracking Number 305261778770. According to the person I spoke to at the courthouse, it should be on the docket within 24hrs. They told us that your office will be notified.

Thanks you,

Victor Elmaleh

On 23 August 2017 at 12:22, Daniel Newman <[dnewman@broadandcassel.com](mailto:dnewman@broadandcassel.com)> wrote:

Mr. Elmaleh:

We checked both dockets yesterday and today. The dockets do not reflect that any motion for enlargement of time was filed. Further, we were not served with any motion. Accordingly, we are filing the motions for default in compliance with the Courts August 16 Order.

Best regards,

Dan Newman

**From:** Victor Elmaleh [mailto:[velmaleh1944@gmail.com](mailto:velmaleh1944@gmail.com)]

**Sent:** Tuesday, August 22, 2017 10:49 AM

**To:** Daniel Newman <[dnewman@broadandcassel.com](mailto:dnewman@broadandcassel.com)>

**Cc:** Christopher C. Cavallo <[ccavallo@broadandcassel.com](mailto:ccavallo@broadandcassel.com)>; Brenda Fradera <[bfradera@broadandcassel.com](mailto:bfradera@broadandcassel.com)>

**Subject:** Re: Victor Elmaleh and Mercedes Elmaleh

Hello Mr. Newman,

Thank you for the email. We did file a motion to enlarge the time yesterday. We sent a notice to the Miami Courthouse by courier, which should be there this morning and hopefully on the docket by tomorrow morning. There was a delay because the original documents we received kept mentioning Judge Dimitrouleas. We were never informed that the presiding Judge was the Honorable Cecilia Altonaga. More importantly, we did not realize that the case was actually in Miami-Dade County as opposed to Broward.

Also, there was an order signed August 7, 2014 by Judge Altonaga that we were never served with in Canada.

We repeatedly called Judge Dimitroleas chambers and sent emails until we spoke to Tammy Barlow, who informed us that this particular case was filed in Miami. We had no idea because all previous filings regarding my son Fred Elm, occurred in Broward County and under Judge Dimitrouleas. We will contest any judgement because of the circumstances but hopefully we can just get an extension so we can appropriately defend this case.

Thank you,

Victor

On 21 August 2017 at 19:18, Daniel Newman <[dnewman@broadandcassel.com](mailto:dnewman@broadandcassel.com)> wrote:

Mr Elmaleh:

Attached is an Order issued by the Court on August 16, 2017. As per my email below, only the Court has the authority to enlarge the time for defendants to file their responses. It does not appear any motion seeking relief was filed by you or any other defendants. Accordingly, I wanted to inform you that based on the Court's Order, the Receiver will be submitting motions for entry of clerk's default.

Best regards,

Dan Newman

**From:** Victor Elmaleh [mailto:[velmaleh1944@gmail.com](mailto:velmaleh1944@gmail.com)]

**Sent:** Monday, August 7, 2017 10:15 PM

**To:** Daniel Newman <[dnewman@broadandcassel.com](mailto:dnewman@broadandcassel.com)>

**Cc:** Christopher C. Cavallo <[ccavallo@broadandcassel.com](mailto:ccavallo@broadandcassel.com)>; Brenda Fradera <[bfradera@broadandcassel.com](mailto:bfradera@broadandcassel.com)>

**Subject:** Re: Victor Elmaleh and Mercedes Elmaleh

Thank you Mr. Newman for the response. Much appreciated. I will ask the Court for the 21 day extension.

All the best,

Victor Elmaleh

On 7 August 2017 at 14:08, Daniel Newman <[dnewman@broadandcassel.com](mailto:dnewman@broadandcassel.com)> wrote:

Mr. Elmaleh:

The Receiver does not oppose your request for a 21 day enlargement of time. However, only the Court can grant the relief you are requesting. The Receiver will not oppose a motion seeking a 21 day enlargement of time for the defendants to respond to the complaint.

Best regards,

Dan Newman

Sent from my iPhone

On Aug 7, 2017, at 10:00 AM, Victor Elmaleh <[velmaleh1944@gmail.com](mailto:velmaleh1944@gmail.com)> wrote:

Hello Mr. Newman,

I am emailing you with regards to Civil Action No. 17-cv-61390. The litigation documents include Victor Elmaleh, Mercedes Elmaleh, Engage Marketing Group and 1925333 Ontario Inc. We recently received the documents and plan to defend the case and file a defense. Since we do not live in Florida, it is harder to find appropriate legal representation and therefore we respectfully request more time to find suitable legal counsel. I believe three weeks from today, will be satisfactory.

Please let me know via email if August 28, 2017 is an agreeable date. If not, I would appreciate it if you let me know as soon as possible so we can contact Judge Dimitrouleas office to request an extension.

Much appreciated!

Victor Elmaleh

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