

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-62603-CIV-DIMITROULEAS/Snow

GRISEL ALONSO, Receiver for Elm Tree Investment  
Advisors, LLC and Elm Tree Investment Fund LP,

Plaintiffs,

v.

JAMES BENVENUTO, an individual, *et al.*,

Defendants.

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**ORDER**

THIS CAUSE is before the Court following a March 27, 2018 hearing on damages following the Court's entry of summary judgment against Someswari Nukala<sup>1</sup> and Ted Greenwald and in favor of the Plaintiff/Receiver.

Mr. Greenwald appeared at the hearing on his own behalf, at which time he explained that he is in possession of evidence that demonstrates that he never received the \$110,000.00 the Plaintiff/Receiver seeks to "claw back" from him. According to Mr. Greenwald, he provided this evidence to his attorney who did not utilize it to defend him in this matter. After Mr. Greenwald fired his attorney, summary judgment was entered against him. He reported that he received the Plaintiff/Receiver's motion for summary judgment and an order to show cause why it should not be granted approximately five days before the Court granted the motion, but that was not enough time for him to act.

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<sup>1</sup> This Order deals only with the Plaintiff/Receiver's claimed damages against Ted Greenwald. A Report and Recommendation will be submitted as to damages with respect to Someswari Nukala.

It has come to the Court's attention that Mr. Greenwald was not at fault for failing to timely respond to the Plaintiff/Receiver's motion for summary judgment, based on the following facts:

1. On January 9, 2017, Mr. Greenwald filed a *pro se* Motion for Extension of Time to Respond to the Complaint. (ECF No. 13) Within his motion, he listed his address as 7 Townsgate Dr., Unit 216, Thornhill, Ont. L4J 8T3 with an additional address at 3505 S. Ocean Dr., Unit 216, Hollywood, Florida 33019, which he indicated he would be renting until March 31, 2017.

2. For purposes of the docket, the Clerk's Office listed Mr. Greenwald's address as 3505 S. Ocean Drive, Unit 216, Hollywood, FL 33019. Chambers staff has since learned that only one address per party can be entered into CM/ECF.

3. On February 6, 2017, attorney Jonathan Lewis filed a Motion to Dismiss for Lack of Personal Jurisdiction (ECF No. 27) on Mr. Greenwald's behalf, at which time Mr. Lewis' address, phone number, facsimile number and e-mail address were entered into CM/ECF.

4. On November 6, 2017, Mr. Greenwald's attorney, Jonathan Lewis, moved to withdraw. (ECF No. 161) The motion advised that all further pleadings and papers should be sent to Ted Greenwald at 7 Townsgate Drive, Thornhill, Canada L4J 7Z9. On November 7, 2017, the Court deferred ruling on the motion to withdraw until November 13, 2017 and ordered Jonathan Lewis, Esquire to serve a copy of the Court's Order (ECF No. 162) upon Ted Greenwald by U.S. mail and e-mail on or before November 9, 2017. On November 9, 2017, Jonathan Lewis, Esquire filed a Notice of Compliance stating he had served a copy of the Court's Order on Ted Greenwald via U.S. mail and e-mail. Neither the Court's Order deferring ruling nor the Notice of Compliance reference Mr. Greenwald's Ontario address or e-mail address. On November 15, 2017, the Court granted the motion to withdraw (ECF No. 165) which was furnished to counsel of record via e-mail and to Ted Greenwald at the Hollywood, Florida address via U.S. Mail listed in CM/ECF.

5. On December 27, 2017, the Plaintiff/Receiver filed a Motion for Summary Judgment (ECF No. 168) as to Ted Greenwald which certifies that it was served "via electronic transmission or U.S. Mail on all counsel or parties of record."

6. Because Mr. Greenwald did not respond to the Plaintiff/Receiver's Motion for Summary Judgment, on January 19, 2018, the Court entered an Order (ECF No. 173) giving Mr. Greenwald until February 2, 2018 to show cause why it should not be granted. The Order was sent via U.S. mail to Mr. Greenwald's Hollywood address listed in CM/ECF. The Court granted the Plaintiff/Receiver's Motion for Summary Judgment on February 12, 2018 (ECF No. 177) and the Order was sent via U.S. mail to Mr. Greenwald at the Hollywood address. The Order on summary judgment was returned as undeliverable on March 1, 2018 and March 13, 2018. (ECF Nos. 179 and 181). At some point the Clerk's Office should have been prompted by the two undeliverable documents (ECF Nos. 179 and 181) and checked for an updated address. Jonathan Lewis filed a Motion to Withdraw as Counsel (ECF No. 161) providing Mr. Greenwald's Ontario address and opposing counsel filed a Notice to Clerk (ECF No. 182) indicating Mr. Greenwald's address should be updated with the Ontario address.

Although it appears that Mr. Greenwald eventually did receive the Plaintiff/Receiver's Motion for Summary Judgment, he was left with very little time to address it through no fault of his own. As Mr. Greenwald claims to have evidence which may create an issue of material fact with respect to whether judgment should be entered against him, and in an abundance of caution, taking into consideration Mr. Greenwald's status as a *pro se* litigant, the Court will give him 30 days from the date of this Order to seek relief from the Court's order granting summary judgment against him. Accordingly, it is hereby

ORDERED AND ADJUDGED that Ted Greenwald may, within (30) days of the date of this Order file a motion to reconsider the Court's order granting summary judgment against him.

Failure to do so likely will result in a recommendation that the Court enter final judgment against him in the amount of \$110,000.00 plus prejudgment interest.

DONE AND ORDERED at Fort Lauderdale, Florida, this 4th day of April, 2018.

  
LURANA S. SNOW  
UNITED STATES MAGISTRATE JUDGE

Copies to:

Counsel of Record and/or pro se parties

Mr. Ted Greenwald (Via Return Receipt International Mail)  
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