

STATE OF NORTH CAROLINA
GUILFORD COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 8163

STEVEN MCRAE,

Plaintiff,

v.

KYLE RUSSELL CURTIS,

Defendant.

ORDER

1. Plaintiff served the Civil Summons and Complaint in this action on Defendant Kyle Curtis (“Curtis”) on August 30, 2019 by delivery by certified mail to what Plaintiff contends was then Curtis’ place of residence. (*See* Aff. Service of Process, ECF No. 7.) Curtis’ mother signed a certified mail return receipt documenting delivery of those materials to her at that address.

2. On October 3, 2019, this Court made an entry of default upon Plaintiff’s proof of service and Curtis’ having not timely responded. (ECF No. 9.) Plaintiff then filed his Motion for Default Judgment. (ECF No. 10.)

3. On November 19, 2019, the Court attempted to provide Curtis with notice of the Motion for Default Judgment through its posting on the Court’s electronic docket and by mailing a copy to Curtis at his last known address. (ECF No. 16.)

4. Although he contends that he had not received the Complaint and Summons by this time, other materials of record now demonstrate that Curtis had

become aware of the lawsuit having been filed against him before the Court entered any default judgment.

5. On January 23, 2020, the Court entered a Partial Judgment by Default having received no filing by Curtis challenging either service, the entry of default, or Plaintiff's Motion for Default Judgment. (ECF No. 17.)

6. On February 6, 2020, Curtis filed his Motion to Set Aside Default Judgment ("Motion"). (ECF No. 19.) Curtis thereafter amended his Motion and filed multiple affidavits and documents to support his contention that he was no longer residing with his mother at the time of service but was rather living in Charlotte, North Carolina with Benjamin Potts ("Potts"). On July 28, 2020, among other materials, Curtis filed his own affidavit, a document purporting to be an affidavit from Potts affirming that Curtis lived with him at the time the Summons and Complaint were served, a lease bearing purported signatures of both Curtis and Potts, and a Discover bank statement purportedly mailed to Curtis at Potts' home address. (ECF Nos. 20, 31.1.)

7. On September 9, 2020, Plaintiff filed an affidavit by Potts testifying that Curtis had forged Potts' signature on both the affidavit and lease Curtis had filed in support of his Motion, and that, in fact, Curtis did not live with Potts in Charlotte at the time the Complaint was served and had not paid Potts rent. (ECF No. 38.) Plaintiff also filed evidence which he contends proves that Curtis materially altered the Discover bank statement to falsely claim that it had been mailed to and received by Curtis in Charlotte at Potts' residence.

8. Curtis has contended and Potts has denied that Curtis made rental payments to Potts in July and August of 2019 through the Discover account.

9. Having reviewed the contradicting sworn statements, the Court advised counsel that it believed depositions of both Curtis and Potts should be taken.

10. On October 22, 2020, transcripts of the deposition of Curtis (ECF No. 47.2), and of Potts (ECF No. 47.1), together with multiple exhibits were filed (*See* Notice of Filing, ECF No. 47). Each continues to challenge the testimony of the other in material respects.

11. Curtis testified during his deposition that he has or will soon have additional materials to support his position but that he would only provide them to his counsel and not directly to Potts or Potts' counsel. Those documents include bank statements from Discover, original electronic files of the Curtis affidavits filed with the Court, and other materials.

12. Curtis' Motion is now before the Court for ruling. The Court wishes to make its ruling only after being satisfied that Curtis has been given adequate opportunity to file documents he contends support his position and which the Court considers potentially relevant to the Court's assessment of the credibility of the competing witnesses.

13. The Court directs that Curtis shall have until 5:00 p.m. on November 5, 2020, to file those additional items identified in his deposition that he at that time intended to produce or file. But for those specified materials, the Court deems the record on the Motion closed absent further order.

14. Also on October 22, 2020, Curtis' counsel of record filed a Motion to Withdraw, stating that Curtis had not yet stated his position regarding that motion. (ECF No. 45). Should Curtis elect to respond to the Motion to Withdraw, he shall do so prior to 5:00 p.m. on November 5, 2020.

IT IS SO ORDERED, this the 26th day of October, 2020.

/s/ James L. Gale

James L. Gale
Senior Business Court Judge