

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ZAKIAH S. COLE : CIVIL ACTION  
: :  
v. : :  
: :  
LAW OFFICES OF JERRY M. MIMS, :  
P.C. : No. 05-cv-06090-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

February 12, 2007

This putative class action was brought pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. The complaint was served upon the defendant on or about December 22, 2005. On May 25, 2006, plaintiff's counsel filed a motion for the entry of a default judgment. On August 25, however, plaintiff's counsel filed a "Praecipe to Withdraw Motion for Default," and simultaneously filed a "Request to Enter Default." On the same date, default was duly noted.

On November 29, 2006, plaintiff again filed a "Motion for Default Judgment as to Law Offices of Jerry M. Mims" and, on December 12, 2006, that motion was granted and judgment by default was entered in favor of the plaintiff and against the defendant. A hearing for the assessment of damages was scheduled for January 16, 2007. On January 10, plaintiff's counsel sought a continuance of the damages hearing, and it was rescheduled for February 13, 2007, at 1:30 p.m. On February 9, 2007, however, plaintiff filed a "Notice of Dismissal" addressed to the Clerk of Court, stating "Pursuant to Fed. R. Civ. P. 41(a), please mark

the above-captioned matter as dismissed without prejudice with respect to Defendant."

Obviously, since judgment has already been entered, Rule 41(a) has no application. On the other hand, it seems clear that plaintiff wishes to withdraw this action without prejudice. Accordingly, an order will be entered vacating the default judgment and dismissing this action without prejudice.

One further point should be addressed. Plaintiff filed this action as a proposed class action, but has not sought to have a class certified. The conduct of this litigation warrants the conclusion that the named plaintiff is an inadequate representative of the proposed class. I consider it appropriate to make it clear that dismissal "without prejudice" will not permit this plaintiff to seek class certification in the future.

An Order follows.

