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STATE OF NORTH DAKOTA

Supreme Court No. 20090066

Supreme Court of North Dakota

Wells Fargo Bank v. Horob, et al

Appeal from Williams County No. 07-C-0752

Todd K. Horob's objection to the validity of Nebraska Judgment

Todd K. Horob acting pro se

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LAW

Plaintiff's have to notify a Defendant and the Defendants Attorney's of Record of all Motions and Hearings. A Plaintiff cannot file Motions of Default Judgment and not contact the Defendant. Defendants have to be contacted. All Defendants have full Right to defend themselves of Judgments.
A Defendant has to be served a Notice of Default or Attorney's have to be in contact with each other.

Effective March 1, 2007
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RULE 3.2 MOTIONS

(a) Submission of Motion.

(1) Notice. Notice must be served and filed with a motion. The notice must indicate the time of oral argument, or that the motion will be decided on briefs unless oral argument is timely requested.

(2) Briefs. Upon serving and filing a motion, the moving party shall serve and file a brief and other supporting papers and the adverse party shall have ten days after service of a brief within which to serve and file an answer brief and other supporting papers. The moving party may serve and file a reply brief within five days after service of the answer brief. Upon the filing of briefs, or upon expiration of the time for filing, the motion is deemed submitted to the court unless counsel for any party requests oral argument on the motion.

(3) Requesting oral argument. If any party who has timely served and filed a brief requests oral argument, the request must be granted. A timely request for oral argument must be granted even if the movant has previously served notice indicating that the motion is to be decided on briefs.The party requesting oral argument shall secure a time for the argument and serve notice upon all other parties. Requests for oral argument or the taking of testimony must be made not later than five days after expiration of the time for filing the answer brief.

(b) Court hearing. The court may hear oral argument on any motion. If permitted by the court, a hearing may be held using electronic means, including telephonic conference or interactive television. After reviewing the parties' submissions, the court may require oral argument and may allow or require testimony on a motion.

(c) Failure to File Briefs. Failure to file a brief by the moving party may be deemed an admission that, in the opinion of party or counsel, the motion is without merit. Failure to file a brief by the adverse party may be deemed an admission that, in the opinion of party or counsel, the motion is meritorious. Even if an answer brief is not filed, the moving party must still demonstrate to the court that it is entitled to the relief requested.

(c) Extension of Time. Extensions of time for filing briefs and other

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supporting papers, or for continuance of the hearing on a motion, may be granted only by written order of court.All requests for extension of time or continuance, whether written or oral, must be accompanied by an appropriate order form.

(e) Time Limit for Filing Motion. Except for good cause shown, a motion must be filed in such time that it may be heard not later than the date set for pretrial of the case.

(f) Application of Rule.

(1) Conflicting rules. This rule does not apply to the extent it conflicts with another rule adopted by the Supreme Court.

(2) Probate code. This rule applies to formal proceedings under Uniform Probate Code.

EXPLANATORY NOTE

Rule 3.2 was amended, effective September 1, 1983; March 1, 1986; January 1, 1988; March 1, 1990; January 1, 1995; March 1, 1997; March 1, 2002; March 1, 2005; March 1, 2007.

Subdivision (a) was amended, effective March 1, 1990, to provide that the request for oral argument on the motion must be granted when the party requesting oral argument has timely served and filed a brief.

Subdivision (a) was amended, effective January 1, 1995, to provide that a written motion must be noticed, and that the notice must indicate that oral argument has been requested or that the motion will be decided on briefs unless oral argument is requested. In addition, the amendment shortened the time between the date a motion is filed and the date a motion may be heard by eliminating the five-day period within which the movant's brief could be filed.

Although the rule contemplates filing a brief with every motion, what constitutes a brief should be liberally construed.

Subdivision (b) was amended, effective March 1, 2007, to expand hearing options to include hearing by interactive television and to add a requirement that the court review the parties' submissions before it orders oral argument or testimony.

Paragraph (f)(1) was added, effective March 1, 1997, to clarify that, in the case of a conflict between this rule and any other supreme court rule, the other rule will govern. For example, N.D.R.Civ.P. 56 allows parties 30 days to respond to a summary judgment motion, which conflicts with the 10 day response period specified in subdivision (a) of this rule. Under subdivision (e), the N.D.R.Civ.P.

56 response period would prevail.

Paragraph (f)(2) was added, effective March 1, 2007, to specify that this rule applies to formal proceedings under the Uniform Probate Code. N.D.C.C. § 30.1-01-06(19) defines "formal proceedings" as "proceedings conducted before a judge with notice to interested persons."

SOURCES: Joint Procedure Committee Minutes of April 27-28, 2006, pages 7-9, 17-19; January 26, 2006, pages 12-13; April 29-20, 2004, pages 25-26; September 28-29, 2000, page 13; April 25, 1996, pages 8-11; January 25-26, 1996, pages 10-16; April 28-29, 1994, pages 15-17; January 27-28, 1994, pages 24-25; September 23-24, 1993, pages 13-16; April 29-30, 1993, pages 20-22; April 20, 1989, pages 10-15; March 24-25, 1988, pages 7-10 and 13-15; December 3, 1987, pages 4-5; February 19-20, 1987, pages 21-22; June 22, 1984, page 30; April 26, 1984, pages 17-19.

STATUTES AFFECTED:

CONSIDERED: N.D.C.C. ch. 30.1.

CROSS REFERENCE: N.D.R.Civ.P. 5 (Service and Filing of Pleadings and Other Papers); N.D.R.Civ.P. 6 (Time); N.D.R.Civ.P. 7 (Pleadings Allowed--Form of Motions); N.D.R.Civ.P. 56 (Summary Judgment); N.D.R.Crim.P. 45 (Time); N.D.R.Crim.P. 47 (Motions); N.D.R.Crim.P. 49 (Service and Filing of Papers); N.D.R.App.P. 27 (Motions); N.D.R.App.P. 34 (Oral Argument); N.D. Sup. Ct. Admin. R. 52 (Interactive Television).

North Dakota Supreme Court Rules N.D.R.Civ.P.

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Effective March 1, 2003
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RULE 55. DEFAULT

(a) Entry. If a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise appear and the fact is made to appear by affidavit or otherwise, the court may direct the clerk to enter an appropriate judgment by default in favor of the plaintiff and against the defendant as follows:

(1) When the plaintiff's claim against a defendant is for a sum certain or for a sum which can by computation be made certain, the court, upon affidavit of the amount due and upon production of the written instrument, if any, upon which the claim is founded, may direct the entry of judgment.

(2) In all other cases, the court, before directing the entry of judgment, shall require such proof as may be necessary to enable it to determine and grant the relief, if any, to which the plaintiff may be entitled. To this end, the court may:

(A) Hear the evidence and assess the damages;

(B) Direct a reference for the purpose of an accounting or for the taking of testimony or for a determination of the facts;or

(C) Submit any issue of fact to a jury.

(3) No judgment by default may be entered against an infant or incompetent person unless represented in the action by a general guardian, or other representative who has appeared therein .If the party against whom judgment by default is sought has appeared in the action, the party (or if appearing by representative, the party's representative) must be served with a motion for judgment .Notice must be served with the motion and must comply with N.D.R.Ct. 3.2(a).

(4) When service of the summons has been made by published notice, or by delivery of a copy without the state, no judgment shall be entered on default until the plaintiff, if required by the court, shall have filed a bond, approved by the court, conditioned to abide such order as the court may make touching the restitution of any property collected or obtained by virtue of the judgment in case a defense is thereafter permitted and sustained; provided, that in actions involving the title to real estate or to foreclose mortgages or other liens thereon such bond shall not be required.

(b) Plaintiffs, Counterclaimants, Cross-Claimants. The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has

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pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

(c) Judgment Against the State. No judgment by default may be entered against the state or an officer or agency thereof unless the claimant establishes a claim or right to relief by evidence satisfactory to the court.

EXPLANATORY NOTE

Rule 55 was amended, effective March 1, 1990; March 1, 2003.

Rule 55 is derived from Fed.R.Civ.P. 55, with several changes.

The federal rule contains a two-step process:entry of default and then entry of judgment. The first step is not specifically required in this rule. Subdivision (a) is a combination of the first two subdivisions of the federal rule, but specifies that the clerk cannot enter judgment by default without being directed to do so by the court, unlike the federal rule where the clerk can enter judgment in certain cases without court direction .Paragraph (2) authorizes the court to require proof before directing the default judgment .Paragraph (4), derived partly from N.D.R.C. § 28-0906 (1943), authorizes the court to require a bond before judgment is entered when service of the summons has been made by publication or delivery out of the state, with certain exceptions.

Subdivision (b) is identical to subdivision (d) of the federal rule.

Subdivision (c) is identical to subdivision (e) of the federal rule, with the substitution of the state for United States.

The federal provision [subdivision (c)] for setting aside default was not adopted .See Rule 60(b) regarding relief from a judgment or order.

The operation of this rule is also directly affected by the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. Appendix §§ 501, et seq. Section 520 imposes specific requirements that must be fulfilled before a default judgment can be ordered or entered .If a default judgment is entered against a person in military service without compliance with the requirements of § 520, the judgment may be vacated.

Rule 55 was amended, effective March 1, 1990. The amendments were technical in nature and no substantive change was intended.

Rule 55 was amended, effective March 1, 2003.Paragraph (a)(3) was changed to substitute the term "motion" for the term "application" and to require that a motion for judgment by default must comply

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with N.D.R.Ct. 3.2(a).

SOURCES: Joint Procedure Committee Minutes of September 27-28, 2001, pages 15-17; April 20, 1989, page 2; December 3, 1987, page 11; November 29-30, 1979, page 15; Rule 55, Fed.R.Civ.P. 55.

STATUTES AFFECTED:

SUPERSEDED:N.D.R.C. §§ 28-0902, 28-0903, 28-0904, 28-0905, 28-0906, 28-0909, 31-0508 (1943).

CROSS REFERENCE: N.D.R.Civ.P. 5(a) (Service -- When Required), N.D.R.Civ.P. 6(d) (For Motions -- Affidavits), N.D.R.Civ.P. 7(b) (Motions and Other Papers), N.D.R.Civ.P. 37 (Failure to Make Discovery Sanctions), N.D.R.Civ.P. 54 (Judgment Costs), and N.D.R.Civ.P. 60 (Relief from Judgment or Order).

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BRIEF - O

Appellant Todd K Horob has appealed Case No. 07-C-0752 to the Supreme Court of North Dakota on 2-9-09. Do to the fact Wells Fargo Bank along with all their attorney's filed a fraudulent Nebraska Judgement against Todd K Horob and then had Judge Rustad on the 12-17-08 lie to Todd K Horob that Wells Fargo and their attorney's didnot have to contact Todd K. Horob or Todd K Horob's attorney's of Record of a motion for default in the State of Nebraska. Todd K Horob is appealing the Nebraska Judgement to be marked fraudulent and the Validity of the Nebraska Judgement by Judge Rustad to be marked invalid. Todd K Horob is asking the court to make order that Wells Fargo Bank and their attorneys have to contact Todd K Horob's attorney's of Record or contact Todd K Horob by certified mail of any motions of Default Judgements.

Wells Fargo Bank didnot contact Todd K Horob or Todd K Horob's Attorney's of Record of a motion of Default. The Northwest Judicial District Court cannot Validate a fraudulent Judgement in Nebraska for Wells Fargo Bank Anyways. Every person in the United States has the right to defend themselves. you cannot defend yourself if you are not contacted. That is what happened in this case.

BRIEF - 1

Wells Fargo Bank along with all there attorneys have never provided Todd K Horob With a Certicate of Service that they have noticed Todd K Horob of a motion for Default Judgment or Todd K Horob's attorney's of Record. At the time that Wells Fargo Claims they filed for Motion for Default Todd K Horob had Attorney Gary Jackson and Attorney Andy Patten on Record for Attorney's. Todd K Horob attorney's where not Contacted of any Motion for Default at Anytime. Bankruptcy Trustee was not contacted of any Motion of Default either.

Wells Fargo Bank and attorney's need to show Proof of there contact with Todd K Horob about a Motion of Default they Claim Was filed. Very hard to fight a Judgment when nobody has made contact of Default Judgment. Every Defendant has full right to argue about a Judgment. But when no body contacts a person the Plaintiff wins. This is a fact of what has happened in this CASE. Nobody was contacted of Motion for Default Judgment. That a fact.

BRIEF - 2

Wells Fargo Bank and Todd K Horob entered into a Stipulation by each parties Attorneys on April 17-06.
Wells Fargo Bank shall not seek to compel Todd Horob to attend, participate or in any way appear in any proceeding in State or federal court except the above named court.
Wells Fargo along with there attorney violated the Stipulation by tring to even take Todd K Horob to State court. Deal is a Deal.
The Stipulation was agreed upon on April 17-06 and then and now have been broken.
A Stipulation Fails under a law of a Contract between the parties involved.
That was Wells Fargo's deal to get further relief from the Stay in Order.
Stipulation on April 17-06 is still in place as of today.
Wells Fargo will have to file a new and separate stay motion for that purpose.
Stipulation says what it reads and is signed by James Patten for Todd K Horob and signed by Attorneys for Wells Fargo Bank.
Deal is a Deal.

BRIEF - 3

Wells Fargo Bank and there attorney's have told untrue statements to Judge Rustad. Attorney Kent REIERSON told Judge Rustad in a letter dated February 26-08 that James Horob gave Wells Fargo a Valid Security agreement. Mr. Reierson lied to the judge. James Horob did not give Wells Fargo a Valid Security agreement. Attorney Garth SJUE lied to Judge Rustad also by saying personal guarantees of Jim Horob. Mr. SJUE tells this in Court Transcript in Case No. 06-C-0113. Jim Horob has not given Wells Fargo personal guarantee. Attorney Adam Olschlager lies to Judge Rustad on July 23-08 saying Todd Horob entered into settlement nagotiations. Todd K Horob has not entered into any settlement with Wells Fargo. Adam needs to show proof of this agreement but he can't. Just look at this proof Wells Fargo Bank has there attorney's lie to a Judge. How can anybody believe what they print or say. Proof is on Paper that Wells Fargo and Attorney do not tell the truth.

BRIEF - 4

Wells Fargo Bank along with there attorney's tried to get Todd K Horob to enter into Judgment in August of 2008. Shows that Wells Fargo Judgment in Nebraska is not done legal. Todd K Horob didnot enter into any Judgment of any kind. Wells Fargo and attorney tried to use the Horob Homestead as a lever to get Todd Horob to sign. August 25, 08 attorney Adam Olschlager says Todd Horob has refused to stipulate to the entry of judgment. It shows Todd Horob is going to fight any kind of judgment. Wells Fargo Bank brought a frandulant Judgment from Nebraska to North Dakota against Todd K Horob.

Stipulations donot mean anything to Wells Fargo Bank and there attorney's so why would you enter into anymore with them.

Proof is on Paper Wells Fargo Bank tried to get Judgment after the fact.

Thatson paper of what happened.

Bankruptcy Trustee on April 4-07 made Todd K Horob and Horob Livestock Inc. the same legal entity. Wells Fargo Bank and attorney's didnot object to the trustee of bankruptcy. So if Todd K Horob and Horob Livestock Inc. are of the same legal entity, bankruptcy court would come into play before State court. Horob Livestock Inc and Todd K Horob would have to be acted in as one. It was ok for the trustee to Amend Complaint and Notice to make Todd K Horob and Horob Livestock Inc the same legal entity on April 4-07 and it shows Wells Fargo did not object. Wells Fargo Bank and all there attorney have violated bankruptcy Law. #19 - Todd K Horob and Horob Livestock should be disregarded and Todd K Horob and Horob Livestock, Inc. Considered the same legal entity. Its filed in The United States Bankruptcy Court of Montana.

BRIEF - 6

Wells Fargo Bank and attorney's didnot attempt to notify any party to a Notice of Default Judgment. Larry Horob shows Affidavit that Larry Horob was not Noticed. Teresa Horob shows Affidavit that Todd K Horob was not Noticed of any Motion for Default. James Horob shows that he is a 50% owner of Horob Livestock Inc and he was not notified of any Motion for Default. Wells Fargo claims they filed for Default Judgment on Horob Livestock Inc at the same time as they say they filed on Todd K Horob. Todd K Horob Shows Affidavit that Wells Fargo and attorney's didnot notice of Motion for Default Judgment.

Wells Fargo didnot notice anybody of a Motion they filed in Nebraska for Default Judgment. Attorney Gary Jackson for Todd K Horob at the time shows Affidavit that Wells Fargo and attorneys didnot notice him or Attorney James Patten of any Motion of Default Judgment.

It very plain to see Wells Fargo Bank and there attorneys didnot notice anyone of Any Motions for Default Judgment.

Todd K Horob
4-29-09

Facts - 7

Todd K Horob has not been sent all paperwork by the Court and by Wells Fargo. The court recording in this case No. 07-C-0752 has been fabracated by someone so it shows many things have not been done correct in this case. Fact of the matter is with a fabracated court transcript how can Todd K Horob answer to a correct brief and appendix. The Appellant Todd K Horob has not recieved All paperwork to the case and that is a plain fact. The bigger fact is Wells Fargo Bank along with all there attorney's is they cannot tell the truth to the court and that is on paper. It's time for Court and a Jury to decide about Judgment. There are many issue's to get in front of a Jury and Judge. Fact is Wells Fargo is thinking they pulled a fast one on Todd K Horob. Wells Fargo's Nebraska Judgment is frandulant. That a fact.

Facts - 8

Wells Fargo Bank along with All there Attorney's never made any kind of contact with Todd K Horob or Attorney's of Record for Todd K Horob about a Motion for Default Judgment. Wells Fargo is acting with a fraudulent Judgment against Todd K Horob. Why would Wells Fargo try to get Todd K Horob to enter into a Judgment in Aug - 08 if there Nebraska Judgment is so grand. Proof is out on paper of what went on in Aug - 08. No matter what anybody says a plaintiff has to notify a defendant and there was attorney's of Record at the time. Certified mail service and a phone call would be clear up any motions. It shows Wells Fargo and attorney's are tring to pull off Fraud with Todd K Horob. Todd K Horob has every right to argue and defend a Judgment. Thats a fact of this case. Stipulation has been violated also.

FACTS - 9

Do to a fabracated Court transcript and court Recording and not up to date paper-work from Court and Wells Fargo Bank the Brief and facts are hard to Answer. Court transcript and Court Recording need to be taken care of First. The Appellant cannot work with Altered transcripts and Recordings. Attorneys do not want to get involved when Altered paperwork from a court is involved.

Todd K Horob
4-29-09