

STATE OF NORTH CAROLINA
COUNTY OF WAKE

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
19 CVS 12432

GARY BAILEY and JOHN DAIZA,

Plaintiffs,

v.

CHAD BOTNER; E8 ENERGY,
INC.; and EDGARDO AGOSTO,

Defendants,

v.

E8 ENERGY GROUP, LLC; E8
ENERGY GLOBAL, LLC; E8
ENERGY PUERTO RICO CORP.;
and SUSTAINABLE TIRE
RECYCLING, LLC,

Nominal
Defendants.

**ORDER ON MOTION FOR
ENTRY OF DEFAULT**

THIS MATTER comes before the Court upon Plaintiffs' Motion for Entry of Default. ("Motion," ECF No. 32.) Plaintiffs move under Rule 55(a) of the North Carolina Rules of Civil Procedure (hereinafter, "Rules") for an entry of default in this action against Defendants Chad Botner ("Botner") and E8 Energy ("E8"). (*Id.*)

The Rules require a defendant to "serve his answer within 30 days after service of the summons and complaint upon him." N.C.G.S. § 1A-1, Rule 12(a)(1). Pursuant to Rule 55(a),

When a party against whom a judgment for affirmative relief is sought has failed to plead or is otherwise subject to default judgment as provided by these rules or by statute and that fact is made to appear by affidavit, motion of

attorney for the plaintiff, or otherwise, the clerk shall enter his default.

N.C.G.S. § 1A-1, Rule 55(a).

However, “[d]efault judgments are disfavored in the law, and therefore any doubts should be resolved in favor of allowing the case to proceed on the merits.” *Broughton v. McClatchy Newspapers, Inc.*, 161 N.C. App. 20, 24, 588 S.E.2d 20, 25 (2003). When a plaintiff moves for entry of default and “an answer is filed before default is entered, the [court] is no longer authorized to enter default against defendants.” *Id.* at 25, 588 S.E.2d at 25; *see also Peebles v. Moore*, 302 N.C. 351, 275 S.E.2d 833 (1981).

On September 12, 2019, Plaintiffs initiated this action by filing their complaint in Wake County Superior Court. (“Complaint,” ECF No. 3.) On October 18, 2019, copies of the Summons and Complaint were served on E8 via Federal Express. (ECF No. 27.) On October 31, 2019, copies of the Summons and Complaint were served on Botner via Federal Express. (ECF No. 24.)

Botner and E8 failed to answer or otherwise respond to the Complaint within thirty (30) days and did not ask the Court for an extension by motion or otherwise. On December 4, 2019, Plaintiffs filed the Motion. (ECF No. 32.) Prior to the Court entering default, Botner and E8 filed their answer on December 12, 2019. (“Answer,” ECF No 35.)

THE COURT, having considered the Motion, the Rules, North Carolina’s appellate case law interpreting Rule 55(a), Botner and E8’s untimely answer filed

prior to the Court filing an entry of default, and other appropriate matters of record, CONCLUDES, in its discretion, that the Motion should be DENIED.

THEREFORE, IT IS ORDERED that Plaintiff's Motion is DENIED and the shall not enter default against Botner and E8 in this action.

SO ORDERED, this the 18th day of December, 2019.

/s/ Gregory P. McGuire
Gregory P. McGuire
Special Superior Court Judge
for Complex Business Cases