

IN THE CIRCUIT COURT OF THE 15TH
JUDICIAL DISTRICT IN AND FOR
PALM BEACH COUNTY, FLORIDA

CASE NO.: 502013CA006759XXXMB
CIVIL DIVISION AA

LLOYD G. WICKBOLDT,

Plaintiff,

vs.

JULIE M. GONZALEZ, and
AMTRUST BANK
Defendants.

**ORDER GRANTING PLAINTIFF'S MOTION TO STRIKE
PLEADINGS AND ENTER DEFAULT AGAINST DEFENDANT, JULIE M. GONZALEZ
and
ORDER DENYING DEFENDANT'S MOTION
FOR CONTINUANCE AND OTHER RELIEF**

THIS CAUSE came before this Court for hearing on August 30, 2016, on Plaintiff, LLOYD G. WICKBOLDT's "Motion to Strike Pleadings and Enter Default against Defendant, JULIE M. GONZALEZ" (the "Motion") as well as Defendant's Motion for Continuance and other relief. Plaintiff was represented by Anthony J. Aragona, III, Esq., and the Defendant appeared *pro se*.

PROCEDURAL AND FACTUAL BACKGROUND

1. This action has its genesis in a lawsuit previously filed in the family division, styled In Re: the Marriage of Lloyd G. Wickboldt, Petitioner, and Julie M. Gonzalez, Respondent, Case No. 502010DR003810XXXXSB, Division, FY, which was filed on March 24, 2010 (the "family law case"). By Agreed Order dated July 12, 2012, the judge severed the civil RICO and conversion counts from the family law case, giving rise to the instant action before this court.

2. Trial in the family law case was held on June 28, 2013 and a Final Judgment of Dissolution was entered by the court on August 5, 2013. Among other things, the court found that Gonzalez had misappropriated Wickboldt's disability checks, forged his signature on numerous checks and deposited the checks into her personal account, all without Wickboldt's knowledge or consent. Following an appeal by Gonzalez, the Fourth District Court of Appeal affirmed the Final

Judgment on May 14, 2015. Due to Gonzalez having “willfully failing to comply with the Final Judgment of Dissolution” and other orders of the court, the family law judge found her to be in indirect civil contempt of court and ordered that a Receiver be appointed to sell her real property as was required in the Final Judgment (D.E. # 285). Since the entry of the Order of Contempt, the court appointed Receiver has also filed a motion to hold Gonzalez in contempt for alleged further violations of the Final Judgment (D.E. # 317).

3. Following an agreed continuance in this case, the court on May 19, 2016, entered an Order Resetting Jury Trial and Directing Pretrial and Mediation Procedures (D.E. 59). On June 10, 2016, Gonzalez’s attorney was permitted to withdraw (D.E. #64).

4. Pursuant to the pre-trial order, the parties were to file and exchange their list of all trial exhibits and witnesses within 90 days prior to the August 26, 2016 calendar call. Plaintiff timely filed his Witness and Exhibit Lists on May 27, 2016. Gonzalez only recently filed her Lists, albeit untimely.

5. On August 16, 2016, Judge Martin Colin, sitting in for the undersigned Judge, entered an order deferring ruling on the instant Motion to Strike. In addition, the order reflected an agreement between Plaintiff and Gonzalez that, among other things: (1) Gonzalez would provide an Exhibit List by August 22, 2016, (2) Mediation shall take place on August 24, 2016 and (3) the deposition of Gonzalez shall take place on August 25, 2016 at 11:00 am. The order provided that these dates “can only be changed by agreement of the parties, or if the court grants a continuance.”

6. Despite the agreement of the parties, Gonzalez ignored the deadlines and has steadfastly refused to appear for mediation or her deposition. Attached to the Motion to Strike is a series of emails and correspondence between Plaintiff’s attorney and Gonzalez which reflect the numerous and repeated efforts on the part of counsel to obtain compliance with the August 16th order. For his efforts, counsel was rewarded with insults and baseless accusations of unethical behavior. Moreover, Gonzalez refused to show up for both her deposition and mediation, requiring Plaintiff’s attorney to cancel the same. Instead, she sought to impose new and reasonable conditions

as a precondition for her cooperation. Finally, Gonzalez failed to cooperate with counsel in executing a Joint Pretrial Stipulation as required by the court.¹ It is against this backdrop that the court considers the Plaintiff's Motion to Strike.

LEGAL ANALYSIS

7. This court is well aware that “the striking of pleadings and the entry of a default is the most severe of penalties and should be employed only in extreme circumstances.” Poling v. Palm Coast Abstract and Title, Inc., 882 So.2d 483, 486 (Fla. 5th DCA 2004). However, the penalty is appropriate in circumstances evincing a deliberate and contumacious disregard of the court's authority or gross indifference to an order of the court, or conduct demonstrating deliberate callousness. Mercer v. Raine, 443 So.2d 944, 946 (Fla. 1983).

8. Based upon the above, the court finds the conduct of Gonzalez to be flagrant, willful and persistent so as to justify this harsh sanction. She has previously been found to be in contempt for refusing to follow the family law judge's order and is facing an additional contempt action filed by the receiver in the same case. Undeterred and unrepentant, she has chosen to willfully ignore this court's pretrial order, notwithstanding the admonition contained therein providing that “NONCOMPLIANCE WITH ANY PORTION OF THIS ORDER MAY RESULT IN THE STRIKING OF THE CASE, WITNESSES, OR EXHIBITS, OR IMPOSITION OF SUCH OTHER SANCTIONS AS ARE JUST.” If that were not enough, she refused to submit herself for deposition and attend mediation, despite a clear and unequivocal court order requiring her to do so.

9. Recently, the Fourth District Court of Appeal has upheld this court's imposition of severe sanctions in the face of non-compliance of an unequivocal judicial order. HSBC Bank Mortgage Corp. (USA) v. Lees, No. 4D15-2083, 2016 WL 4540424 (Fla. 4th DCA, Aug. 31, 2016) (Bank's disregard of the pre-trial order warranted the striking of its only witness and the entry of an involuntary dismissal.) It should be noted, that trial is less than one week away. To ignore or disregard Gonzalez's repeated and deliberate violations of court orders, forces the Plaintiff to go to

¹ As set forth in the Order Resetting Trial, “UNILATERAL PRETRIAL STATEMENTS ARE DISALLOWED, UNLESS APPROVED BY THE COURT AFTER NOTICE AND HEARING SHOWING GOOD CAUSE.”

trial without having had the opportunity to participate in mediation or take the Defendant's deposition. The court is also deprived of the required joint pretrial statement. These actions on the part of Gonzalez "cast a pall over a trial court's inherent duty of steadfast case management and demean the sanctity of a trial court's pre-trial order that sets forth pre-trial procedures which, unless the trial court orders otherwise, is not optional." *Id.* It would be wholly unfair to require the Plaintiff to bear the brunt of any prejudice not of its making.

Based on the foregoing, it is hereby ORDERED and ADJUDGED that Plaintiff's Motion to Strike is GRANTED. Accordingly, the court strikes Defendant's Answer, Affirmative Defenses and Counterclaim and a DEFAULT is hereby entered against her.

It is further ORDERED and ADJUDGED that Defendant's Motion for Continuance and all other relief requested is DENIED²

DONE AND ORDERED in Chambers at West Palm Beach, Florida, this 7th day of September, 2016.



THE 15TH JUDICIAL CIRCUIT
FLORIDA
A DIVISION OF THE STATE COURT

Richard L. Oftedal, Circuit Judge

Copies Furnished:

ANTHONY ARAGONA, III, ESQ., 1036 GROVE PARK CIRCLE, BOYNTON BEACH, FL 33436

Email: anthony.aragona@att.com

JULIE GONZALEZ – Email: julia.gonzalez85@yahoo.com; juliegonzalez64@hotmail.com

² Defendant's Motion to Recuse Judge Colin is denied as moot, as Judge Colin only filled in for the undersigned judge during his absence and Judge Colin will not be presiding over any further hearings or matters in this case.