



K3 Logistics, LLC v. Crytotherm Manufacturing, Inc.

2024 | Cited 0 times | W.D. Texas | May 28, 2024

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF TEXAS

MIDLAND/ODESSA DIVISION K3 LOGISTICS, LLC,

Plaintiff/Counter Defendant, v. CRYPTOTHERM MANUFACTURING, INC.,

Defendant/Counter Plaintiff, v. CLAYTON BUSH and NGL WATER SOLUTIONS

Counter Defendants.

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MO:24-CV-00001-DC-RCG

REPORT AND RECOMMENDATION OF THE U.S. MAGISTRATE JUDGE BEFORE THE COURT is Plaintiff/Counter- Pleadings. (Doc. 34). This case is before the undersigned through a Standing Order pursuant to

28 U.S.C. § 636 and Appendix C of the Local Court Rules for the Assignment of Duties to United States Magistrate Judges. After due consideration of relevant case law and the record in this case, the undersigned RECOMMENDS that Motion to Dismiss and Strike be GRANTED. (Doc. 34). As the Court explained during the April 4, 2024 hearing and in it May 8, 2024 Order Regarding New Counsel for Defendant (Doc. 37), the Holmes Law Group forward. The Court admonished Crytotherm in two separate orders dated April 5, 2024 and May

8, 2024 that Crytotherm is not entitled to represent itself as a corporation it must be represented by a licensed attorney (Docs. 32 at 2; 37 at 1). Because Crytotherm is a corporation pro se or through a non-attorney, but rather must be represented by a licensed attorney in this

Henderson v. Fenwick Protective Inc., No. 3:14-CV-505-M-BN, 2015 WL 3439166, at *1 *2 (N.D. Tex. May 28, 2015) (citing M3Girl Designs, LLC v. Purple Mountain Sweaters, No. 3:09-cv-2334- G, 2010 WL 304243, at *2 (N.D. Tex. Jan. 22, 2010)). In Donovan v. Road Rangers Country Junction, Inc., 736 F.2d 1004, 1005 (5th

Cir. 1984) (per curiam) (quoting K.M.A., Inc. v. General Motors Acceptance Corp., 652 F.2d 398, 399



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(5th Cir. 1982)). Initially, in its April 5 counsel and have said 32 at 3). Then, the Court gave Cryptotherm another chance on May new counsel to enter an appearance in this case by no later than 5 days after receipt of this

May 8, 2024 Order also warned Cryptotherm that its failure to hire counsel to represent it may result in appropriate measures, including possibly striking Id. at 1 2. See Henderson, 2015 WL 3439166, at *1 *2; , No. 3:10-cv-2642-L, 2012 WL 899271, at *1 *2 (N.D. Tex. Mar. 16, 2012). Now, almost two months after 2024 Order, Cryptotherm has still failed to obtain legal counsel and cause the new counsel to

enter an appearance in this case by the Court-imposed deadlines. New counsel has not entered an appearance for Cryptotherm, and Cryptotherm has not made any filing since the time of its attorneys were allowed to withdraw from the case on April 5, 2024. But there is no question that Cryptotherm is aware of this action, having previously retained counsel to represent it in its defense and filing its own counterclaims. (See Docs. 1, 10). 1

Memon v. Allied Domecq QSR, 385 F.3d 871, 873 (5th Cir. 2004). When a corporation declines to hire counsel to represent it, the Court may properly strike its defenses, if it is a defendant. See Donovan, 736 F.2d at 1005 (holding district court

have found default judgment to be the appropriate remedy when a corporation fails, after court Henderson, 2015 WL 3439166, at *2 (citing PalWeb Corp. v. Vimonta AG, No. 3:00-cv-1388-P, 2003 WL 21992488, at *1 (N.D. Tex. Aug. 19, 2003) (entering a final judgment against the defendant, a Swiss company, and finding that the defendant had been validly served; that the defendant entered its appearance through counsel; that counsel was allowed to withdraw by order of the court; that the court ordered the defendant that no attorney licensed to practice in the jurisdiction had entered an appearance on the

; Mount Vernon Fire Ins. Co. v. Obodoechina, Civ. A. No. 08- business is without counsel, it is appropriate to instruct the business that it must retain counsel.

If, after sufficient time to obtain counsel, there is no appearance by counsel, judgment may be .

The Court finds that Cryptotherm remains unrepresented by counsel in this case. Additionally, the Court finds there is no question Cryptotherm is aware its counsel has withdrawn from its representation and is aware of the consequences of such. Cryptotherm cannot 1. The Court notes Cryptotherm removed this case to federal court. continue to proceed unrepresented in this case. The Court has thoroughly considered imposing alternate sanctions short of striking Cryptotherm s. However, considering all the the Court finds that lesser sanctions would not serve the interests of justice or advance the disposition of this case on the merits. Henderson, 2015 WL 3439166, at *3.



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Further, Federal Rule of Civil Procedure 41(b) authorizes the district court to dismiss an action sua sponte for failure to prosecute or to comply with a court order. *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998). The Court finds that the only remedy available in light of dismissed in the interest of judicial economy.

RECOMMENDATION For the reasons stated above, the Court RECOMMENDS:

1. The Court order that Defendant s Original Answer to K3 s Complaint (Doc. 4) be stricken from the record;
2. First Amended Answer to K3 (Doc. 10) be stricken from the record;
3. counterclaims for failure to prosecute and

(b). 4. The Court order that K3 move, by no later than a date 30 days from the date of entry of any order adopting this recommendation, for default against Crytotherm. It is further ORDERED the Clerk of the Court shall send this Report and Recommendation to:

Crytotherm Manufacturing, Inc. 7555 51 Street Southeast, Calgary, AB, Canada, T2C 4AC. SIGNED this 28th day of May, 2024.

RONALD C. GRIFFIN UNITED STATES MAGISTRATE JUDGE INSTRUCTIONS FOR SERVICE AND NOTICE OF RIGHT TO APPEAL/OBJECT In the event that a party has not been served by the Clerk with this Report and Recommendation electronically, pursuant to the CM/ECF procedures of this District, the Clerk is ORDERED to mail such party a copy of this Report and Recommendation by certified mail. Pursuant to 28 U.S.C. § 636(b)(1), any party who desires to object to this report must serve and file written objections within fourteen (14) days after being served with a copy. A party filing objections must specifically identify those findings, conclusions, or recommendations to which objections are being made; the District Judge need not consider frivolous, conclusive, or general objections. Such party shall file the objections with the Clerk of the Court and serve the conclusions, and recommendations contained in this report shall bar the party from a de novo determination by the District Judge. the proposed findings, conclusions, and recommendations contained in this report within fourteen (14) days after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the District Judge. *Douglass v. United Servs.*, 79 F.3d 1415, 1428 29 (5th Cir. 1996).

