

IN THE CIRCUIT COURT OF COLBERT COUNTY, ALABAMA

John R. Benn

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Plaintiff,

*

vs.

*

CASE NUMBER: CV-2002-184

Robert Novak

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Defendants.

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Plaintiff's Notice of Defendant Novak's Service Deficiencies

Comes now the Plaintiff John Benn and notifies the Court of numerous deficiencies in Defendant Novak's pleadings regarding service. Specifically, Plaintiff Benn would note for the Court as follows:

1) Defendant Novak's "Motion for Continuance" dated 11/6/02 was not served on Plaintiff Benn. Plaintiff first learned of this filing after receiving the Court's notice that said pleading was "Denied".

2) That Defendant Novak's "Motion to Continuance" dated 11/6/02 purports to contain a "Certificate of Service" by a person named "Stacy Turturro" who is not a party to this action, is not answerable to this Court, and further is apparently not an agent or employee of Defendant Novak.

3) That Defendant Novak's "Notice of Motion to Set Aside Default" signed by Defendant Novak on January 31, 2003 was not contemporaneously submitted to Plaintiff Benn.

4) That Defendant Novak's "Notice of Motion to Set Aside Default" purports to contain a "Certificate of Service" by a person named "Eileen Abrahall" who is not a party to this action, is not answerable to this Court, and further is apparently not an agent or employee of Defendant Novak.

5) That the "Certificate of Service" contained in Defendant Novak's "Notion of Motion to Set Aside Default" indicates that service is being made on January 31, 2003 to Plaintiff Benn at 104 West Third Street.

6) That Plaintiff Benn did not receive such pleading from Defendant Novak until February 12, 2003. Said pleading was not submitted to the U.S. Post Office on January 31, 2003 as indicated in the claimed "Certificate of Service" and was addressed to Plaintiff at "102 Hiram Street" - Plaintiff's residence address.

7) That the envelop used by Defendant Novak was intentionally stamped "Media Mail" to delay its delivery such that Plaintiff Benn did not receive it until February 12, 2003 some six (6) days after the Court's hearing.

8) That Defendant Novak's "Notice of Motion to Set Aide Default" contained as Exhibit "K" what purports to be some sort of response to Plaintiff's discovery. Said pleadings were not served on Plaintiff Benn.

9) That the aforesaid pleading purports to contain a "Certificate of Service" by a person named "Eileen Abrahall" who is not a party to this action, is not answerable to this Court, and further is apparently not an agent or employee of Defendant Novak. Further, said responses to any Requests for Admissions by Plaintiff were untimely under Rule 33(a) in that responses were due on or before December 5, 2002.

10) That Defendant Novak has exhibited contempt for this Court and its procedures by regularly failing to serve Plaintiff with pleadings and discovery responses in this case as required by the Alabama Rules of Civil Procedure. Further, Defendant Novak has failed to provide a legally sufficient certificate of service signed by him as required by the ARCP.

Wherefore, Plaintiff requests the Court to take notice of the multiple deficiencies by Defendant Novak in properly serving pleadings and discovery responses in this case.

Date

John R. Benn

ASB-0868-B23J

Pro se

104 West Third Street

Sheffield, AL 35660

Phone: 256-386-7685

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CERTIFICATE OF SERVICE

I, the undersigned attorney, do hereby certify that, prior to or immediately after filing the foregoing with the Court, I mailed U.S. Mail, postage prepaid, or delivered by hand a copy to:

Mr. Robert Novak
1550 Sunrise Highway
Copaigue, New York 11726

Date: _____

John R. Benn