

Federal Court



Cour fédérale

Date: 20131011

Docket: T-819-13

Citation: 2013 FC 1038

Ottawa, Ontario, October 11, 2013

PRESENT: The Honourable Mr. Justice Annis

Docket: T-819-13

BETWEEN:

**7732716 CANADA INC.
f.a.s.r.s. MISS TEEN CANADA**

Plaintiff

and

**GND PRODUCTIONS CORP.
f.a.s.r.s. MISS TEEN CANADA WORLD and
MTC-W INC.
f.a.s.r.s. MISS TEEN CANADA WORLD**

Defendants

REASONS FOR ORDER AND ORDER

[1] The plaintiff seeks default judgment against the defendants. The defendants contest that they were personally served.

[2] The matter was considered by Madam Justice Mary Gleason who directed on August 12, 2013, an adjournment of the motion for default judgment to September 30, 2013 to permit the

defendant, MTC-W Inc. time to consider the motion materials, and if it considered it appropriate, to conduct a cross examination of the deponent of the affidavit in support of the motion.

[3] By way of letter dated August 20, 2013, MTC-W Inc.'s counsel requested the availability of the deponent for cross examination over the following three weeks. There is no evidence that a reply was provided to the letter. The defendant, MTC-W Inc. has deposed that none was received.

[4] Instead, the plaintiff, on October 1, 2013, proceeded to make further submissions in which it claimed that the defendant, MTC-W Inc. was personally served, providing further evidence not contained in the original motion materials, but without reference to the request for cross examination of its deponent.

[5] In the circumstances, due to the failure of the plaintiff to comply with the Direction of this Court which was provided in order to explore the issue of personal service, its motion for default judgment is dismissed. The defendant, MTC-W Inc. shall file forthwith a draft Statement of Defence in the form contained in its motion materials. The action shall thereafter proceed in its normal course.

[6] As the defendant, MTC-W Inc. has succeeded on the motion which proceeded despite its earlier request that the plaintiff withdraw the motion and proceed with the action, it is entitled to its costs. It may file submissions within 15 days of this Order. The plaintiff may reply within 15 days thereafter.

ORDER

THIS COURT ORDERS that the plaintiff's motion for default judgment is dismissed with costs to the defendant, MTC-W Inc.

"Peter Annis"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-819-13

STYLE OF CAUSE: 7732716 CANADA INC.,
f.a.s.r.s. MISS TEEN CANADA v
GND PRODUCTIONS CORP.,
f.a.s.r.s. MISS TEEN CANADA WORLD and
MTC-W INC., f.a.s.r.s. MISS TEEN CANADA WORLD

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369**

**REASONS FOR ORDER AND
ORDER:** ANNIS J.

DATED: OCTOBER 11, 2013

APPEARANCES:

Marc Boudreau

FOR THE PLAINTIFF
7732716 CANADA INC.
f.a.s.r.s. MISS TEEN CANADA

Brian P. Isaac
Mark G. Biernacki
Patrick M. Roszell

FOR THE DEFENDANTS
GND PRODUCTIONS CORP.
f.a.s.r.s. MISS TEEN CANADA WORLD AND
MTC-W INC.
f.a.s.r.s. MISS TEEN CANADA WORLD

SOLICITORS OF RECORD:

CMB Avocats Inc.
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FOR THE PLAINTIFF
7732716 CANADA INC.
f.a.s.r.s. MISS TEEN CANADA

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FOR THE DEFENDANTS
GND PRODUCTIONS CORP.
f.a.s.r.s. MISS TEEN CANADA WORLD AND
MTC-W INC.
f.a.s.r.s. MISS TEEN CANADA WORLD