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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3
4 RAYMOND BROOKS; AND
5 BRADY LINEN SERVICES, LLC,

6 Appellants,

7 v.

8 JERREL TURNER; AND KESHA
9 FRYER,

10 Respondents.
11

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Elizabeth A. Brown
Clerk of Supreme Court

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13 **APPENDIX TO RESPONDENTS' ANSWERING BRIEF**

14 Vol 1

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EXHIBIT “1”

ORD

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DISTRICT COURT

CLARK COUNTY, NEVADA

JERRELL TURNER, KESHA FRYER,

Plaintiffs,

vs.

RAYMOND BROOKS; BRADY LINEN
SERVICES, LLC; DOES I-X, and ROE
ENTITIES I-X, inclusive,
Defendants.

CASE NO.: A-18-780839-C
DEPT NO.: 25

ORDER REGARDING DEFENDANTS' MOTION TO SET ASIDE DEFAULT

Defendants' motion to set aside default having come on for decision on June 2, 2020, a written opposition having been filed, the Court being fully advised in the premises and good cause appearing, the Court hereby makes the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court hereby FINDS that defendants Raymond Brooks and Brady Linen Services, LLC were properly served with the summons and complaint and had actual notice of the lawsuit filed by the plaintiffs.

The Court hereby FINDS that after being properly served with the summons and complaint and having actual notice of the subject lawsuit Raymond Brooks and Brady Linen Services, LLC failed to file an answer or responsive pleading within the time allotted under the Nevada Rules of Civil Procedure.

1 The Court hereby FINDS that after defendants Raymond Brooks and Brady Linen Services, LLC
2 failed to file an answer or responsive pleading within the time allotted under the Nevada Rules of Civil
3 Procedure, on March 5, 2019 a default was entered against each of the defendants.

4 The Court hereby FINDS that after defendants Raymond Brooks and Brady Linen Services, LLC
5 failed to file an answer or responsive pleading within the time allotted under the Nevada Rules of Civil
6 Procedure, on April 8, 2019 the plaintiffs served a three day notice of intent to take default judgment on
7 each of the defendants.
8

9 The Court hereby FINDS that after defendants Raymond Brooks and Brady Linen Services, LLC
10 were served with three day notice of intent to take default judgment they did not take any steps to make
11 an appearance in the case until May 19, 2020 when they filed a motion to set aside the default, after the
12 plaintiffs had moved for default judgment and that this is a situation where the adversary process has
13 been halted because of the defendants' unresponsiveness.
14

15 The Court hereby FINDS that Travelers Insurance Company did not clearly evidence an
16 intention to defend the defendants in the subject case. The sole argument raised by the defendants in
17 support of the motion to set aside the default was the argument that the default should be set aside
18 because a copy of the summons and complaint was not served on Travelers Insurance Company. The
19 defendants rely on *Christy v. Carlisle*, 94 Nev. 651, 584 P.2d 687 (1978) in arguing that the default
20 should be set aside. However, the *Christy* case is distinguishable from the subject case. In the subject
21 case the only communications that took place between Travelers Insurance Company and counsel for the
22 plaintiff involved simple, routine claims handling activities. These communications ended on October
23 6, 2016 nearly two years before the filing of the complaint.
24

25 In the *Christy* case, unlike the subject case, the insurance company had communicated with the
26 plaintiff about the suit and had received an open extension to respond to the complaint. In this case
27 Travelers did not communicate with plaintiffs or their counsel about the lawsuit in any way. Further, in
28

1 the *Christy* case, unlike the subject case, the attorney for the plaintiff had promised to notify the
2 insurance company that a responsive pleading needed to be filed when the open extension was over. In
3 this case, because no extension to answer the complaint had been requested or given, plaintiffs' counsel
4 did not promise Travelers that he would notify them when a responsive pleading was due.

5 The defendants argue that the communications that took place between the Travelers adjuster
6 and counsel for plaintiffs evidence a clear intention to defend the lawsuit and required plaintiffs to serve
7 a copy of the summons and complaint on Travelers Insurance Company. The Court cannot agree with
8 the defendants' position. While it is true that pre-litigation communications between an insurance
9 company and a party can demonstrate the type of clear intention to defend the lawsuit that is set forth in
10 *Christy*, that does not mean that every type of communication between an insurance company and a
11 party necessarily demonstrates the clear intent to defend a lawsuit that is described in *Christy*. The
12 defendants' argument seeks to stretch the holding in the *Christy* case beyond what the Nevada Supreme
13 Court intended.
14

15 The Nevada Supreme Court did not hold that simple, routine claims handling activities carried
16 out by an insurance adjuster constitute the clear evidence of intention to defend the lawsuit that is
17 described in *Christy*. The Court FINDS that the communications that took place between Travelers
18 Insurance Company and counsel for plaintiff in this case were insufficient to evidence the type of clear
19 evidence of intent to defend the defendants that were referenced in the *Christy v. Carlisle*, 94 Nev. 651,
20 584 P.2d 687 (1978) case.
21

22 The *Christy* case is also distinguishable from the subject case for a number of other reasons. In
23 the *Christy* case, unlike the subject case, the defendant Carlisle was not personally served and never
24 received actual notice of the filing of the complaint. In this case it is undisputed that both Raymond
25 Brooks and Brady Linen Services, LLC were personally served with the summons and complaint.
26
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1 In the *Christy* case, unlike the subject case, the plaintiff obtained the default judgment only six
2 days after the filing of the default. In this case the plaintiff waited for an entire year before moving to
3 take the default judgment.

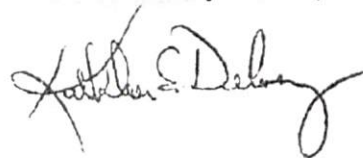
4 In the *Christy* case, unlike the subject case, the plaintiff did not serve the defendants with a three-
5 day notice of intent to take default judgment. In this case the plaintiff personally served the defendants
6 with the summons and complaint and also served the defendants with a three-day notice of intent to take
7 default judgment.

8 In this case, unlike in the *Christy* case, one of the defendants, Brady Linen Services, LLC, is a
9 corporation which certainly has the sophistication to understand the importance and necessity of filing
10 an answer to a complaint after having been properly served with the summons and complaint. For all of
11 the reasons set forth above, it is hereby
12

13 ORDERED, ADJUDGED AND DECREED that Defendants' Motion to Set Aside Default is
14 hereby DENIED.

Dated this 25th day of March, 2021

15 DATED this ____ day of ____, 2020.



16
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18 DISTRICT COURT JUDGE
OF9 0D1 BBFE 3D97
Kathleen E. Delaney
District Court Judge

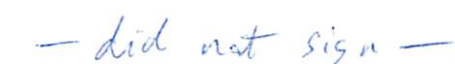
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Turner vs. Brooks, et al
Case No. A-18-780839-C
Order re: Defendants' Motion to Set Aside

AA0124

1 CSERV

2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5
6 Jerrell Turner, Plaintiff(s)

CASE NO: A-18-780839-C

7 vs.

DEPT. NO. Department 25

8 Raymond Brooks, Defendant(s)
9

10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District
12 Court. The foregoing Order was served via the court's electronic eFile system to all
13 recipients registered for e-Service on the above entitled case as listed below:

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