

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
HUNTINGTON DIVISION**

WALLACE L. SCRUGGS, JR.,

and

RENEE SCRUGGS,

PLAINTIFFS,

v.

Civil Action No: 3:13-CV-30435

WAYNE ANDERSON, individually, and
As successor in interest to American Energy
Holdings, LLC, Wilon Resources, Inc. and E2
Investments, LLC;
US NATURAL GAS CORP WV,
US NATURAL GAS CORP,
And SYLIOS CORP.

DEFENDANTS.

**PLAINTIFFS' MOTION FOR DEFAULT AGAINST
WAYNE ANDERSON, PURSUANT TO RULE 55(a),
WITH INCORPORATED MEMORANDUM OF LAW**

NOW COME the Plaintiffs, Wallace L. Scruggs, Jr. and Renee Scruggs, by counsel, to respectfully move for entry of default against Defendant, Wayne Anderson, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure. In support, Plaintiffs state as follows:

FACTS

This case pertains to claims of fraud, negligence, breach of contract, and breach of

fiduciary duty against Wayne Anderson of St. Petersburg Florida and various corporate entities that he chooses to operate under from time to time. *See Complaint*, ECF No. 1. Essentially, Wallace and Renee Scruggs invested three hundred and fifty thousand dollars (\$350,000.00) to buy a “working interest” in what turned out to be a sham gas well enterprise, through a Subscription Agreement with American Energy Holding, LLC in 2006. *See Id.* Anderson has since changed the name of the corporate entities several times.

The Plaintiffs’ allegations of fraud and breach of contract arise from the fact that the alleged gas well – to the extent it exists at all – is located on property which has not been leased by any of Mr. Anderson’s companies or predecessors. Accordingly, the Defendants cannot extract mineral from this location. Yet, for years, Anderson has claimed to the Scruggs that the well existed and that it would soon be ready for production, while at the same time asking for further investment in the well in order to perform maintenance. Details concerning the specific allegations are set forth in the Amended Complaint.

Based upon the arbitration clause that was contained in the Subscription Agreement between the parties, the Court stayed this litigation in favor of arbitration, and the Plaintiffs did not oppose this action. *See Memorandum Opinion and Order*, entered 7/1/2014, ECF No. 10. Because arbitration had not occurred, the Court entered an order directing the Plaintiffs to show cause for why the matter should not be dismissed. *See Order*, entered 6/11/2015, ECF No. 15. The Plaintiffs then explained that, although they are equally comfortable pursuing the case in arbitration or federal court, they had encountered much difficulty in securing the Defendants’ participation in the arbitration. *See Plaintiffs’ Response to Court Order of June 11, 2015 and Report of Case Status*, filed 6/19/2015, ECF No. 16. The Plaintiffs sought to keep the federal court case open against the corporate defendants, who were unrepresented in the arbitration

proceedings, but agreed to allow the case to proceed against Wayne Anderson separately in arbitration. *See Id.* In October of 2015, the Plaintiffs then filed a Report of the Arbitration Status with Court, wherein they informed the Court that there had been numerous problems with Mr. Anderson's failure to participate in the arbitration and that the Defendants had failed to pay their share of the fees for the arbitration proceedings. *See Plaintiffs' Report of Arbitration Status*, filed 10/15/2015, ECF No. 25.

In March of 2016, the Plaintiffs again informed the Court that Mr. Anderson had not been participating in the arbitration proceedings, and further informed the Court that Mr. Anderson had not paid the required arbitration fees; therefore, the Plaintiffs moved the Court to remand the case back to the active docket in federal court. *See Plaintiffs' Response to Order of February 24, 2016 (DE-26) and Report of Case Status, and Plaintiffs' Motion to Remand Case to Active Docket in Federal Court*, filed 3/2/2016, ECF No. 27.

The Court agreed, and entered an Order reinstating the case on the active docket. *See Order Reinstating Case*, filed 3/30/2016, ECF No. 36. The Plaintiffs then moved for default judgment against all defendants, showing that Wayne Anderson had demonstrated a pattern of acting in bad faith and stalling the arbitration and litigation processes. *See Id.* at ECF pages 159-160. The Plaintiffs also illustrated how the corporations were prohibited from pro se representation, and that they required representation by an attorney. *See Id.* at ECF pages 160-162.

The Defendants responded with absurd allegations that the Plaintiffs had also failed to pay their arbitration fees. *See Defendant's Response to Plaintiffs' Motion for Default Judgment Against Defendants Wayne Anderson, US Natural Gas Corp. WV, US Natural Gas Corp and Sylios Corp*, filed 5/2/2016, ECF No. 38.

The Plaintiffs then filed a Reply, in which they made clear that judgment should be granted against the corporate entities, as that argument was unopposed, and Wayne Anderson specifically stated that he was not responding on behalf of the corporate entities. See Plaintiffs' Reply Memorandum of Law in Support of Motion for Judgment Against Defendants Wayne Anderson, US Natural Gas Corp. WV, US Natural Gas Corp, and Sylios Corp, filed 5/9/2016, ECF No. 39.

Ultimately, the Court granted the Plaintiffs' motion and entered default judgment against the corporate defendants, but denied the motion with respect to Wayne Anderson, individually, stating

...[D]efault judgment against Mr. Anderson is not warranted at this time. Mr. Anderson responded to Plaintiff's motion for default judgment with allegations that, if true, make default judgment against him unwarranted.

Order, filed 5/11/2015, ECF No. 40.

The Court then held a Scheduling Conference in this matter, and entered a Scheduling Order in this case. See Order, filed 6/3/2016, ECF No. 41 (rescheduling the Scheduling Conference); *see also* Scheduling Order, filed 6/16/2016, ECF No. 43. Despite the fact that the Court expressly directed the parties to appear, in person, for the Scheduling Conference, Defendant Anderson did not appear. Pursuant to the Scheduling Order, the case proceeded against defendant Anderson; however, Anderson refused to participate. Specifically, Anderson would not respond to numerous requests for deposition scheduling, nor would he respond to any inquiry from the Plaintiff Counsel at any time subsequent to his non-appearance at the Court-ordered scheduling conference.

On August 22, 2016, the Court held a Pretrial Conference in this matter. Defendant, Wayne Anderson, was unrepresented and did not appear for the Pretrial Conference. The Court

suspended the current Scheduling Order and further ordered that the Plaintiffs would have one week from that hearing to file a Motion for Default to be entered by the Clerk, in accordance with the Federal Rules of Civil Procedure. In compliance with the Court's ruling at the Pretrial Conference, the Plaintiffs submit this Motion for Default to be entered by the Clerk, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure.

LAW & ARGUMENT

Entry of Default against a party by the Clerk is authorized by Rule 55(a) of the Federal Rules of Civil Procedure, which states, in pertinent part:

- (a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

Fed. R. Civ. Pro. 55(a) (2016).

Procedurally, once default has been entered by the clerk, the plaintiff may move the court to enter a default judgment against the defendant pursuant to Rule 55(b)(2). *See* Finney v. MIG Capital Mgmt., Inc., Civil Action No. 2:13-02778 (S.D. W. Va. March 27, 2014) (Memorandum Opinion and Order); *see also* United States v. Moradi, 673 F.2d 725, 727 (4th Cir. 1982); *see also* Fed. R. Civ. P. 55(b) (2016). In compliance with Rule 55, Plaintiffs' counsel has also included an Affidavit, which explains his efforts to obtain cooperation from Mr. Anderson in this case and further demonstrates Mr. Anderson's failures to defend this action. *See* Affidavit of Plaintiffs' Counsel, Robert R. Waters, attached hereto as **Exhibit A**.

Although the Court previously indicated that default was not yet warranted against Defendant, Anderson, the Plaintiffs now respectfully move for entry of default against him because of his continued brazen violations of Orders of this Court, which stem back over two

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