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IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA
APPEALS DIVISION

EYVIND BONNER,

Appellant,

v.

LEWIS C. LEE,

Appellee.

CASE NO.: 17 ~~2010-AP-000028~~
L.T. Case No.: 17 2009-SC-000096
Division: III

APPEALS DIVISION
FILED & RECORDED

2010 DEC -1 P 2:38

ERHIE LEE MAGAHA
CLERK OF CIRCUIT COURT
ESCAMBIA COUNTY, FL

ORDER ON APPEAL

Appellant, Eyvind Bonner, filed a timely appeal from the Final Amended Judgment on Claim and Counterclaim in the above cause. For the reasons set forth herein, the judgment of the county court is Affirmed, in part, and reversed, in part.

A Statement of Claim/Complaint was filed by the Appellee, Lewis C. Lee, on January 9, 2009. Thereafter a Counterclaim was filed by Appellant with leave of court on May 1, 2009. Following an evidentiary hearing conducted by the Court on June 17, 2009, a Final Judgment on Claim and Counterclaim was rendered by the Court. That Final Judgment found in favor of the Plaintiff/Appellee, Lewis C. Lee, in the amount of \$2,500.00 and further found that the Defendant/Appellant, Eyvind Bonner, shall take nothing on his Counterclaim and each party was to bear their own costs.

Thereafter on July 16, 2009, Appellant filed a Motion for Rehearing together with a letter addressed to the trial judge. Without further notice or hearing, an Amended Judgment on Claim and Counterclaim was entered by the Court reducing the amount of judgment on Appellee's claim to \$1,000.00. That Amended Judgment on Claim and Counterclaim was entered on September 1, 2009.

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Thereafter and in response to the Amended Final Judgment, Appellee sent the trial court a letter asking the Court to reinstate the original Final Judgment. Again, without notice or hearing, the trial court entered a Final Amended Judgment on Claim and Counterclaim in favor of the Plaintiff in the amount of \$1,750.00. That Final Amended Judgment on Claim and Counterclaim was entered on May 28, 2010.

Thereafter on June 8, 2010, the Appellant filed a Motion to Set Aside the May 28, 2010 Final Amended Judgment on Claim and Counterclaim; a Motion for Rehearing was also filed by the Appellant on June 11, 2010.

An Order Denying Appellant's Motion for Rehearing was entered by the Court on June 15, 2010.

Upon review of the record on appeal, this Court found that a transcript of the proceedings of June 17, 2009 had not been filed by the Appellant and the Court entered an order requiring Appellant to supplement the record on appeal with a transcript of those proceedings, failing in which the appeal would be dismissed for lack of a reviewable record. An unsigned response to that order was purportedly filed by the Appellant, Eyvind Bonner, on November 30, 2010 but the Appellant failed to comply with the order of the Court requiring the record to be supplemented with a transcript of the proceedings conducted on June 17, 2009. As such, a meaningful review of the Court's initial Final Judgment on the Claim and Counterclaim cannot be conducted by this Court. Therefore, the trial court's finding in favor of the Plaintiff/Appellee on the Claim and Counterclaim must be affirmed as to liability.

However, with regard to the amount of damages, there is sufficient record evidence that the Amended Final Judgments were rendered without notice or hearing to


either of the parties and apparently were based upon the *ex parte* communications contained within the letters mailed to the trial court. To that end, the Final Amended Judgment on Claim and Counterclaim entered by the Court on May 28, 2010 as same relates to damages must be reversed.

Accordingly, it is

ORDERED AND ADJUDGED that the Appeal from the Final Amended Judgment on Claim and Counterclaim is affirmed in part and reversed in part and remanded for further proceedings on the issue of damages only.

DONE AND ORDERED in Chambers, Pensacola, Escambia County Florida this

6th day of December, 2010.


Paul A. Rasmussen, Circuit Judge

cc:

- 12/06/10
gc
- ✓ Division III Presiding Judge
 - ✓ Eyvind Bonner, 627 Berkley Drive, Pensacola, Florida 32526
 - ✓ Lewis C. Lee, 12101 Dessau Road, #2403, Austin, Texas 78757

tb

July 30, 2010

I, Eyvind Bonner, have voluntarily withdrew my appeals for STAY
ISSUANCE of FUNDS, case no.: 2010AP29.

Eyvind Bonner

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APPEALS DIVISION
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ERNEST LEE MAGARRA
CLERK OF CIRCUIT COURT
CAMBRIA COUNTY, PA