

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION**

JAMES D. SILVER, not individually, but solely in his capacity as Receiver for NEXSTAR COMMUNICATIONS, LLC; TMT EQUIPMENT COMPANY, LLC; TMT MANAGEMENT GROUP, LLC; POSA, LLC; POSA TMT, LLC; TELEVEST COMMUNICATIONS, LLC; TELEVEST GROUP, LLC; and SPIN DRIFT, LLC,

Case No. 6:06-cv-290-Orl-PCF-DAB

Plaintiff,

v.

EDWARD S. DIGGES, JR., an individual; KATHERINE KERR, an individual; KBK PARTNERSHIP, LLP, a/k/a KBK, a foreign limited liability partnership; LOUIS CHRISTIAN HAUG, an individual; K. BRIGID PETERSON, f/k/a K. BRIGID MCGONNIGAL, an individual; J. BRUCE MCGONNIGAL, an individual; K. BRETT MCGONNIGAL, an individual; RICHARD F. MCGONNIGAL, an individual; and CHILHAM, LLC, a foreign limited liability company,

Defendants.

**PLAINTIFF'S MOTION FOR ENTRY OF CLERK'S DEFAULT**

Plaintiff, James D. Silver, as Receiver ("Receiver"), by and through undersigned counsel and pursuant to Fed. R. Civ. P. 55, and pursuant to the instructions of this Court as communicated to undersigned counsel by the Clerk of the Court, hereby files this Motion for

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Entry of Clerk's Default, and requests this Court to direct the Clerk of the Court to enter default against Defendant Chilham, LLC ("Chilham"), and in support thereof states as follows:

1. A copy of the Summons and Amended Complaint in this action was served on Chilham on June 13, 2006. (See D.E. #26).

2. As a professional courtesy, the Receiver granted an extension of time to Chilham to answer or otherwise respond to the Amended Complaint, until July 19, 2006. This extension of time was communicated to Gregg Bernstein, Esq., who had not appeared on behalf of Chilham or any other Defendant, via e-mail on June 29, 2006. A true and correct copy of the email from the Receiver to Mr. Bernstein is attached hereto as Exhibit "A."

3. Chilham purported to submit an Answer to the Amended Complaint, which was entered onto this Court's docket on July 20, 2006 (D.E. #66).

4. However, Chilham's Answer was not filed or signed by Mr. Bernstein or any other licensed attorney admitted to practice before this Court, as required by Local Rule 2.03(d).<sup>1</sup>

5. Accordingly, in response to a motion by the Receiver, Chilham's Answer was stricken by this Court's Order dated July 25, 2006 ("the July 25 Order") (D.E. #69).

6. The July 25 Order gave Chilham ten (10) days to refile its Answer to the Amended Complaint, making Chilham's Answer due on August 8, 2006, pursuant to this Court's Local Rules and Fed. R. Civ. P. 6.<sup>2</sup>

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<sup>1</sup> In fact, Chilham's Answer was signed by Defendant Edward S. Digges, Jr. ("Digges"), in his capacity as General Manager of Chilham. Not only is Digges not a licensed attorney admitted to practice in this Court, but Digges was actually disbarred by the State of Maryland several years ago, as reflected in an unreported decision of the Maryland Court of Appeals (See *Attorney Grievance Comm'n v. Digges*, Misc. Docket (Subtitle BV), No. 38, 1989 Term (Md. 1989)).

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7. Chilham purported to refile its Answer on August 9, 2006, after the Court imposed deadline for re-filing. (D.E. #81). Chilham's purported August 9 Answer was signed by Mr. Bernstein and by Lee Fugate, Esq., both of the firm of Zuckerman Spaeder LLP.<sup>3</sup>

8. While the Receiver recognizes that Chilham's Answer was filed only one day after it was due pursuant to the July 25 Order, the Receiver feels that in light of the prior extension provided to Chilham, Chilham's subsequent filing of a purported Answer clearly violative of Local Rules, and Chilham's failure to timely answer or otherwise defend in compliance with the July 25 Order, the entry of default is warranted in this instance.

**WHEREFORE** the Receiver respectfully requests this Court to direct the Clerk of the Court to enter default against Defendant Chilham, LLC, and to grant any further relief this Court deems just and proper.

**CERTIFICATE OF CONFERRAL**

Pursuant to Local Rules, upon being informed by the Clerk of the Court that this Court had directed this motion to be filed, undersigned counsel contacted Messrs. Bernstein &

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<sup>2</sup> Contrary to Chilham's assertion in its Response to the Receiver's previously-filed affidavit requesting this Court to enter default against Chilham (see note 3, *infra*), Chilham was not entitled to an additional three days to refile its Answer pursuant to Fed. R. Civ. P. 6(e). The July 25 Order required Chilham to refile within 10 days of the entry of that Order. Rule 6(e) applies only to acts that must be undertaken within a specific time after service of a document, not within a specific time after entry of that document. See *Advanced Microtherm, Inc. v. Norman Wright Mechanical Equipment Corp.*, 2006 WL 1525695 (N.D. Cal. May 30, 2006) ("...the ten-day period was triggered by the date of the order itself, and not service. Because Rule 6(e), by its terms, does not apply unless the period to be calculated is triggered by the date of service, Plaintiffs objections are untimely.")

<sup>3</sup> A few hours prior to Chilham's re-filing of its purported Answer, on August 9, 2006, the Receiver filed an Affidavit of undersigned counsel containing a request for entry of default against Chilham by the Clerk of the Court. On August 11, 2006, the Clerk's Office contacted undersigned counsel and relayed the Court's directive that the Affidavit of undersigned counsel be terminated and that the Receiver refile its request for entry of default by the Clerk of the Court in the form of the instant motion.

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Fugate via e-mail to inform them of the imminent filing of this motion, and Mr. Bernstein indicated that Chilham was opposed to the relief sought herein.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been uploaded this **11<sup>th</sup>** day of August, 2006 to the Court's CM/ECF system which will send a notice of electronic filing to the following counsel of record:

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I FURTHER CERTIFY that I mailed the foregoing via U.S. Mail to the following non-CM/ECF participants:

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**Chilham, LLC**

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By: 

MICHAEL A. SHAFIR

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