

BARTON RUPERT

v.

MIRANDA McCLURE et al.

Submitted on Briefs February 20, 2019
Decided February 28, 2019

Panel: ALEXANDER, MEAD, GORMAN, JABAR, HJELM, and HUMPHREY, JJ.

MEMORANDUM OF DECISION

Barton Rupert appeals from a judgment of the Houlton District Court (*Larson, J.*) denying his motion to set aside an entry of default on Miranda McClure's counterclaim after Rupert failed to timely respond. *See* M.R. Civ. P. 12(a), 55(a). Contrary to Rupert's contention, the court did not abuse its discretion in declining to set aside the default after noting the lack of evidence of good cause for his failure to reply to the counterclaim. *See Maroon Flooring, Inc. v. Austin*, 2007 ME 75, ¶¶ 6-8, 927 A.2d 1182; M.R. Civ. P. 55(c). Because the averments of the counterclaim were taken as true upon entry of the default, *see Sheepscoot Land Corp. v. Gregory*, 383 A.2d 16, 24 (Me. 1978), the court properly awarded McClure \$8,860 in attorney fees pursuant to 5 M.R.S. § 213(2) (2018), *see Firth v. Rockland*, 580 A.2d 694, 696 (Me. 1990).

Furthermore, the court did not abuse its discretion in (1) declining to allow the parties to conduct discovery after it had been determined on an earlier occasion that discovery was unnecessary and trial had already been delayed on multiple occasions, *see* Field, McKusick, & Wroth, *Maine Civil Practice* § 26.9 at 421-22 (2d ed. 1970); or (2) declining to impose sanctions on McClure when it found that McClure's answer complied with M.R. Civ. P. 8(b)

and was not an attempt to further delay the proceedings. *See Erskine v. Comm’r of Corr.*, 682 A.2d 681, 684 (Me. 1996) (reviewing the denial of a motion for sanctions for abuse of discretion); *Paladac v. Rockland*, 558 A.2d 372, 376 (Me. 1989) (reviewing the court’s refusal to permit discovery for an abuse of discretion).¹

The entry is:

Judgment affirmed.

Richard L. Rhoda, Esq., Houlton, for appellant Barton Rupert

Patrick E. Hunt, Esq., Patrick E. Hunt, P.A., Island Falls, for appellees Miranda McClure, Forrest Howe, and Joanne Ruth Howe

Houlton District Court docket number CV-2017-10
FOR CLERK REFERENCE ONLY

¹ Rupert does not argue that either the discovery orders or the order on sanctions caused him to fail to reply to the counterclaim.