

OPINION SUMMARY
MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION TWO

JAMIE HEINECK,) No. ED103557
)
Respondent,) Appeal from the Circuit Court of
) St. Louis County
vs.)
) Honorable Colleen Dolan
DANIEL KATZ,)
)
Appellant.) Filed: April 26, 2016

Daniel Katz (Appellant) appeals the default judgment of the Circuit Court of St. Louis County. The trial court ordered Appellant to pay Jamie Heineck (Respondent) damages in the amount of \$12,000 for breach of contract. On appeal, Appellant argues that the trial court erred by granting Respondent’s motion for default judgment because the trial court did not have personal jurisdiction over Appellant, and Appellant was never properly served with process. Additionally, Appellant argues that he was not required to file a motion to set aside the default judgment in order to confer jurisdiction upon this Court to hear the appeal.

VACATED AND REMANDED.

Division Two Holds:

- 1) Under Rule 74.05(a), Appellant “otherwise defended” Respondent’s claims by filing his “Reply to Motion for Default Judgment.” Therefore, the trial court erred by entering a default judgment against Appellant.
- 2) Although Appellant’s “Reply to Motion for Default Judgment” was untimely, Appellant did not waive the defenses of lack of personal jurisdiction, insufficiency of process, and insufficiency of service of process.
- 3) Under the circumstances presented in this case, Appellant was not required to file a motion to vacate or set aside the default judgment in order for this Court to have jurisdiction to consider the appeal.

Opinion by: Philip M. Hess, P.J.
Gary M. Gaertner, Jr., J. and Angela T. Quigless, J. concur.

Attorney for Appellant: Leonard Komen

Attorney for Respondent: Scott L. Kolker

THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.