

STATE OF NEW HAMPSHIRE

CARROLL, SS

SUPERIOR COURT

Docket No. 212-2011-CV-068

Lindsey Evans and Michael Evans

v.

Thomas Fleischman d/b/a Comprehensive Home Inspection

ORDER

Pending before the court is the plaintiffs' Motion for Final Default Pursuant to Superior Court Rule 75 or in the Alternative to Exclude Affirmative Defenses. The defendant objects, to which the plaintiffs respond.

By their motion, the plaintiffs assert that the defendant's Answer failed to comply with Superior Court PAD Rule PR 1 by: 1) failing to meet the substance of the plaintiffs' allegations denied by the defendant; and 2) failing to state in short and plain terms the defendant's defenses. The court takes up each issue in turn.

The defendant's Answer specifically asserts that he is without knowledge as to the Complaint's paragraph 1, admits paragraph 2, and denies paragraphs 3 (a)-(j), 4, 5 and 6. The plaintiffs assert that the fact-based pleading requirements applicable to claims should be extended to denials set out in answers. As did a minority of the ACTL Task Force on Discovery in its 2009 Final Report, the undersigned agrees in principle, but a majority of that Task Force disagreed, and such a requirement is not set out in the New Hampshire PAD Rules as adopted. The plaintiff's motion for final default based upon the assertion that the defendant's Answer failed to comply with the specificity requirement of PR 1(c) is denied.

The defendant's Answer sets out 25 Affirmative Defenses, listing each but not including any assertion of fact in support of any such defenses. The Affirmative Defenses listed include, for example, among many others: an assertion that the plaintiffs' action is barred by the statute of limitations but with no explanation of how an action commenced in March 2011 concerning a July 2010 home inspection report could be so

barred; an assertion that the action must be dismissed because the plaintiffs have failed to join an indispensable party but with no explanation of who such a party may be or what makes that party indispensable; and an assertion that the action must be dismissed because the plaintiffs have waived any claims against the defendant but with no explanation of when or how they are claimed to have done so.

“The Committee believes that pleadings which notify the opposing party and the court of the factual and legal basis of the pleader’s claims or defenses will better define the issues of fact and law to be adjudicated.” PR 1, Committee Notes. Thus, although the Answer’s statement of defenses is to be in short and plain terms, it must “give the opposing party and the court sufficient information to determine whether the claim or defense is sufficient in law to merit continued litigation.” *Id.* The defendant’s statement of affirmative defenses does not do so. Further, although his objection to the plaintiffs’ pending motion does include assertions of fact in support of his denial of the plaintiffs’ claims set out at Complaint paragraphs 3 through 6, it does not shed any light on factual assertions which might support his affirmative defenses.

Accordingly, the plaintiffs’ request for entry of default against the defendant is denied, but the plaintiffs’ request to strike the defendant’s statement of affirmative defenses is granted.

So ordered.

May 25, 2011

Steven M. Houran
Presiding Justice