

# Court of Appeals, State of Michigan

## ORDER

Paul Rempala v Thomas Kezhaya

Docket No. 335595

LC No. 14-013607-PD

Cynthia Diane Stephens  
Presiding Judge

Christopher M. Murray

Michael J. Riordan  
Judges

Pursuant to MCR 7.205(E)(2), the Court orders that the order granting plaintiff's motion for default judgment and the corrected order granting plaintiff's motion for default judgment are VACATED. Although plaintiff's motion for default judgment specifically requested damages of \$28,731.11, he requested triple that amount at the motion hearing. This is significant, for neither plaintiff's request for default nor his motion for default judgment even mentions treble damages, let alone the statutory conversion theory argued at the motion hearing. Thus, plaintiff first requested the relief he ultimately obtained without providing the notice due to defendants under MCR 2.603(B)(1)(a)(ii) (requiring the party requesting a default judgment to give notice of the request to the defaulted party if "the request for entry of a default judgment seeks relief different in kind from, or greater in amount than, that stated in the pleadings"), and as a result, violated defendants' rights to due process. *Vaillencourt v Vaillencourt*, 93 Mich App 344, 350; 287 NW2d 230 (1979); see also *Perry v Perry*, 176 Mich App 762, 769-770; 440 NW2d 93 (1989), overruled on other grounds *Draggou v Draggou*, 223 Mich App 415, 427-428; 566 NW2d 642 (1997). Accordingly, we REMAND this matter for proceedings consistent with this order.

This order is to have immediate effect. MCR 7.215(F)(2).

This Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

APR 11 2017

Date

*Jerome W. Zimmer Jr.*  
Chief Clerk