

STATE OF MICHIGAN
COURT OF APPEALS

STEVEN RIVERA and LAURIE RIVERA,

Plaintiffs-Appellees,

v

RALPH HAM,

Defendant-Appellant.

UNPUBLISHED

July 11, 1997

No. 188626

Ingham Circuit Court

LC No. 94-078275 CH

Before: Cavanagh, P.J., and Doctoroff and D.A. Teeple*, JJ.

MEMORANDUM.

Defendant appeals by right summary disposition in favor of plaintiffs. This case is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiffs' initial complaint was in two counts, one for disparagement of title, for which plaintiff sought as remedy that a lien placed on their property by defendant be removed, and a second count for breach of contract, in which plaintiffs sought damages totaling \$9,153.26, plus interest, costs, and attorney fees. During a period of time in which defendant was self-represented, he failed to respond to plaintiffs' request for admissions, and was thereby deemed to have admitted certain contested factual issues. MCR 2.312(B)(1). On the basis of these admissions, plaintiffs sought and were granted summary disposition. Defendant opposed summary disposition only on the basis that he had not actually received the request for admissions; defendant claimed that his business and residence addresses are the same, and his business involves landlord/tenant relations and he has had problems with the mail.

Defendant contends that the trial court abused its discretion in denying his motion for relief from judgment based on lack of actual service of the requests for admissions. While plaintiffs' proof of service by mail of such requests creates only a rebuttable presumption that the material was received by defendant, *Koopman v Logan*, 93 Mich App 252; 286 NW2d 872 (1979), at this stage of the proceedings there is more of concern than whether defendant received the request for admissions. At no time has defendant proffered answers to such requests indicating that the facts now deemed admitted

* Circuit judge, sitting on the Court of Appeals by assignment.

are inaccurate in some significant and nonconclusory respect. Accordingly, the trial court did not abuse its discretion in denying defendant's motion for relief from judgment. *Lark v Detroit Edison Co*, 99 Mich App 280; 297 NW2d 653 (1980).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Martin M. Doctoroff

/s/ Donald A. Teeple