

COA Opinion: When faced with a civil complaint, a defendant may not generally assert his right against self-incrimination, but must answer the complaint and assert his right in response to specific allegations.

27. April 2011 By Layla Kuhl

In *The Huntington National Bank v Ristich*, the Court of Appeals held “a defendant desiring to invoke the privilege against self-incrimination at the pleading stage of a civil action is not excused from filing a timely answer to the complaint, unless otherwise provided by law.” The Court affirmed that trial court’s denial of defendant’s motion to set aside default and grant of default judgment for plaintiff, because defendant failed to establish good cause and a meritorious defense.

Plaintiff Huntington National Bank and Defendant Ristich executed two loan agreements, one for \$55,000 for a 2008 BMW and one for a personal line of credit for \$25,000. According to plaintiff, defendant did not grant it a security interest in the BMW pursuant to the loan agreement and misrepresented his yearly income on his applications. Plaintiff filed the instant action alleging two counts of breach of contract and one count of fraud. Defendant, in pro per, failed to file an answer and instead moved for an evidentiary hearing and stay of proceedings. Defendant stated that he believed that the federal government was investigating him for “the same allegations” and that he was trying to protect his constitutional right to be free from self-incrimination by moving for the evidentiary hearing and to stay the proceedings. The trial court denied defendant’s motion and directed defendant to answer the complaint. The court instructed defendant to answer each allegation specifically, and to raise the privilege against self-incrimination in response to each paragraph that he believed he could not answer. Finally, the court instructed defendant to move the court in writing if he wished to set aside the default.

After entry of default, plaintiff moved for default judgment and an evidentiary hearing on damages. Defendant moved to set aside default arguing that letting the default judgment stand would result in a manifest injustice. He submitted an affidavit of meritorious defense which simply stated “I have a meritorious defense to Plaintiff’s complaint in that I dispute the amount of the debt owed.” The trial court denied defendant’s motion to set aside and entered default judgment, resulting in this appeal.

On appeal the Court addressed defendant’s three arguments. First defendant argued that his motion to stay proceedings was equivalent to and should have been treated as a request for an extension of time to file an answer. The Court rejected this argument noting that under MCR 2.119(A)(1) a motion must “state with particularity the grounds and authority on which it is based” and “state the relief or order sought.” The Court specifically concluded that motions to stay proceedings and to extend time for filing an answer should not be treated synonymously.

The Court also rejected defendant’s argument that his motion to set aside default should have been granted because he took “other action permitted by law” under MCR 2.108(A)(1) and “otherwise defend[ed]” himself under MCR 2.603(A)(1) by moving for an evidentiary hearing and to stay the proceedings, wherein he invoked the constitutional privilege against self-incrimination. The Court

noted that defendant failed to provide legal support for his argument that his motion for an evidentiary hearing constituted “other action permitted by law.” The Court pointed out that motions characterized as “attacks on pleadings,” including motions for summary disposition under MCR 2.116, to strike, and for a more definite statement, alter the time for filing an answer. It reasoned that a motion for an evidentiary hearing and stay of the proceedings are not attacks on pleadings and thus are insufficient to extend the time for answering a complaint. The Court further concluded that defendant’s motion for an evidentiary hearing and stay of proceedings cannot be characterized as “otherwise defend[ing]” an action because defendant’s motion was not defensive. Rather the essence of the motion was to postpone the proceedings indefinitely.

With regard to defendant’s motion to set aside default, the Court noted that defendant affidavit’s did not provide the trial court with any particular facts establishing a meritorious defense. The Court concluded that his affidavit was inadequate because merely contesting the amount of liability does not establish a meritorious defense.