

VIRGINIA:

IN THE CIRCUIT COURT FOR FAIRFAX COUNTY

TIMOTHY RIZER, *et al.*,)
)
Plaintiff,)
) Case No. CL-2025-37
v.)
)
HARVEST GATE DEVELOPMENT, LLC,)
et al.,)
)
Defendants.)

MEMORANDUM OPINION AND SUPPLEMENTAL ORDER GRANTING MOTION FOR
RULE TO SHOW CAUSE

This case raises the question of whether a litigant in default who seeks leave to file late responsive pleadings may willfully refuse to comply with a court order granting such leave on the ground that the court lacks personal jurisdiction over it. For the following reasons, the Court has no trouble in concluding that the answer is “no.” Even if a court ultimately concludes it has no personal jurisdiction over a litigant, a court always has jurisdiction to determine its own jurisdiction. Thus, while proceedings to determine personal jurisdiction are still pending, the party contesting jurisdiction must obey all non-merits orders issued by the Court in the course of adjudicating the jurisdictional question. This result is essential to the integrity of the judicial process and operates as a narrow exception to the otherwise well-established maxim that a court order issued without proper jurisdiction (personal or subject matter) is void.

BACKGROUND

The pertinent facts are not in dispute. On January 2, 2025, Plaintiffs Timothy Rizer and Marto2, LLC filed their Complaint against Harvest Gate, LLC (“Harvest Gate”), an individual named John Carroll (“Carroll”), and certain other defendants. Plaintiffs alleged ten claims

against Harvest Gate and sought not less than \$6,620,000 in actual damages, \$700,000 in punitive damages, and an unspecified amount of attorney's fees. Harvest Gate was served on January 29, 2025, Carroll was served on February 11, 2025, and the other defendants were served at different times.

Under Va. Sup. Ct. R. 3:8(a), Harvest Gate had twenty-one days in which to file responsive pleadings, *i.e.*, by on or before February 19, 2025.¹ The deadline came and went, and by operation of law Harvest Gate went into default. Rule 3:19(a).² On March 5, 2025, a pleading entitled "Motion to Dismiss by Limited Special Appearance for Lack of Personal Jurisdiction" was purportedly filed on behalf of Harvest Gate by defendant Carroll "*in pro per.*"³ The problem for Harvest Gate, however, was that limited liability companies may not represent themselves in Virginia and Carroll is not a member of the Virginia State Bar. *See Richmond Ass'n of Credit Men v. Bar Ass'n of City of Richmond*, 167 Va. 327, 335 (1937) ("Independent of statute, it is contrary to public policy for a corporation to practice law, directly or indirectly"); *1924 Leonard Rd., L.L.C., v. Van Roekel*, 272 Va. 543, 553 (2006) (a limited liability company is a distinct entity separate from its members); *see also* Rules of the Supreme Court of Virginia, Part 6, § I (Unauthorized Practice of Law Rules).⁴ Because Carroll was not a member of the Virginia State

¹ Hereinafter, references to specific rules of the Supreme Court of Virginia will appear as "Rule ____."

² In some jurisdictions, a party is not in default until a court has entered a default judgment. In Virginia, tardiness in filing a responsive pleading causes a defendant to fall into a state of default by operation of law.

³ Presumably Carroll meant "*in propria persona*", a Latin phrase meaning "in their own person." The term is used to signify a litigant representing themselves without a lawyer.

⁴ Though *Richmond Ass'n of Credit Men* involved a corporation and Harvest Gate is a limited liability company, that distinction is irrelevant on the facts of this case.

Bar authorized to represent Harvest Gate, his attempt to file a responsive pleading for it was a nullity.⁵

By March 14, 2025, Harvest Gate had retained Virginia counsel who filed a Motion for Leave to File Late Responsive Pleadings on Harvest Gate's behalf. Harvest Gate's Memorandum in Support invoked Rule 3:19(b). Rule 3:19(b) states as follows:

Relief from Default. Prior to the entry of judgment, for good cause shown the court may grant leave to a defendant who is in default to file a late responsive pleading. Relief from default may be conditioned by the court upon such defendant reimbursing any extra costs and fees, including attorney fees, incurred by the plaintiff solely as a result of the delay in the filing of a responsive pleading by the defendant.

On April 7, 2025, Plaintiffs responded with a Motion to Strike and for Entry of a Default Judgment. The Court heard argument on the foregoing motions on April 18, 2025, and it granted leave for Harvest Gate to file its responsive pleadings out of time. The issue of whether the late filing would be conditioned on the payment of Plaintiffs' fees and costs, which is permitted under Rule 3:19(b), was taken under advisement. Harvest Gate ultimately filed a Motion to Dismiss for Lack of Personal Jurisdiction on April 21, 2025.

Pursuant to a Letter Opinion dated May 23, 2025 and an Order dated June 16, 2025, the Court ordered Harvest Gate to pay Plaintiffs \$9,872.50 in fees and costs incurred by the latter as a result of addressing Harvest Gate's default under Rule 3:19(b) (the "Fee Award"). The Court required compliance with the Fee Award by July 7, 2025. After Harvest Gate failed to pay on time, Plaintiffs filed a Motion for Rule to Show Cause on July 29, 2025, that was granted by the Court on September 26, 2025. Harvest Gate was again ordered to pay the Fee Award, this time

⁵ While Carroll's filing in this case was void, the Court does not reach the issue of what collateral consequences, if any, might flow from his action with respect to jurisdiction.

by October 3, 2025. The Court took Plaintiffs' request for an additional award of fees and costs under advisement and indicated that a written opinion would follow.⁶

Harvest Gate refuses to pay the Fee Award. It contends that the Court lacks authority to compel it to pay due to an alleged lack of personal jurisdiction. On December 29, 2025, Plaintiffs filed a Motion to Strike and for Entry of Default Judgment against Harvest Gate which has been docketed for hearing on January 16, 2026. Plaintiffs seek an order striking Harvest Gate's responsive pleadings and entering default judgment in light of Harvest Gate's refusal to comply with the conditional permission granted to Harvest Gate to file its responsive pleadings out of time.

ANALYSIS

The Court finds Harvest Gate's position to be untenable. Harvest Gate cannot dispute that it was duly served, and it does not contend that the Court lacks subject matter jurisdiction over the case. Harvest Gate's claim is that the Court lacks personal jurisdiction over it. As stated by the United States Supreme Court:

A defendant is always free to ignore . . . judicial proceedings, risk a default judgment, and then challenge that judgment on jurisdictional grounds in a collateral proceeding. [Internal cite omitted]. By submitting to the jurisdiction of the court for the limited purpose of challenging jurisdiction, the defendant agrees to abide by that court's determination of the issue of jurisdiction.

Ins. Corp. of Ir., Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 706 (1982). Here, Harvest Gate could have ignored the process served on it and fought a default judgment another day, potentially in another forum. Instead, it attempted to avoid default altogether. It must now live with the consequences of that strategic decision.

⁶ This Memorandum Opinion and Order is the referenced opinion.

As noted, the process afforded by the Supreme Court of Virginia to avoid a default judgment and file a responsive pleading out of time is set forth in Rule 3:19. Rule 3:19 is manifestly a rule of civil procedure. Such procedural rules are collateral to the merits of underlying disputes, but they are nonetheless essential to the entire system of justice. *See, e.g., Barrett v. Rhudy*, 299 Va. 27, 28 (2020) (dismissing appeal on jurisdictional grounds for failure to satisfy a rule of procedure but assessing sanctions against the appellant nonetheless); *Willy v. Coastal Corp.*, 503 U.S. 131, 137 (1992) (courts have a fundamental interest in “the maintenance of orderly procedure” even where it is ultimately determined that jurisdiction is lacking); *Hanna v. Plumer*, 380 U.S. 460, 473 (1965) (describing “long-recognized power of [the legislature] to prescribe housekeeping rules for . . . courts”). Thus, it is unsurprising that the United States Supreme Court and the Supreme Court of Virginia have both held that sanctions are available to enforce procedural rules even where a court is otherwise without subject matter jurisdiction over the underlying dispute. *E.g., Willy*, 503 U.S. at 173; *Barrett*, 299 Va. at 28 (citing cases).⁷

Rule 3:19(b) is a neutral rule of general application, collateral to the merits, that is part of Virginia’s Rules of Court. As stated by the Court of Appeals in *Browning v. Browning*, 68 Va. App. 19, 31 (2017):

[C]ompliance with [the Rules of Court] is necessary for the orderly, *fair* and expeditious administration of justice [emphasis in original]. . . . [N]eutral procedural rules allow courts to set limits and mark off boundaries without regard to which side stands to gain or lose. . . . When courts apply procedural rules dispassionately and neutrally to every litigant . . . everyone else knows exactly what is expected of them and, hopefully, will rise to the occasion. . . . [Numerous internal cites omitted]

⁷ The Court is well aware that the issue in this case involves personal jurisdiction. For purposes of determining the question presented, however, cases involving personal or subject matter jurisdiction are instructive if not binding.

Courts always have jurisdiction to determine their own jurisdiction, even where it is ultimately determined that jurisdiction (personal or subject matter) is lacking. *E.g.*, *Barrett*, 299 Va. at 28-29 (citing cases). Thus, the operation of procedural rules in such contexts does not impermissibly expand the authority of a court. *See Willy*, 503 U.S. at 135; *cf. Barrett*, 299 Va. at 28 (assuming courts have authority to issue sanctions even if subject matter jurisdiction is found to be lacking). Further, the application of procedural rules which result in an order assessing fees and costs during a portion of a case related to a determination of jurisdiction is not a “judgment on the merits.” Such an order exists outside the merits of a particular case or controversy but is still integral to the judicial process brought to bear upon the jurisdictional question. *See, e.g.*, *Barrett, supra*, 299 Va. at 28; *Eagle Force Holdings, LLC v. Campbell*, 187 A.3d 1209, 1241 (Del. 2018) (affirming a finding of contempt in the jurisdictional phase of a case and stating that a “court[] may hold proceedings to determine whether it has jurisdiction over a given action and, while doing so, impose orders to preserve the status quo pending the outcome of the proceedings”). In short, jurisdiction litigation involves “a case within a case” such that orders necessary to the determination of jurisdictional issues are not necessarily void even if it is ultimately determined that a subsequent merits judgment is void.⁸

In giving trial courts discretion to assess attorney’s fees against defendants who fail to file timely responsive pleadings as a condition of remaining out of default, Rule 3:19 is clearly procedural and collateral to the merits. It is part-and-parcel of the tools trial courts may use to

⁸ Valid orders in this category would include scheduling orders, jurisdictional discovery orders, and orders for sanctions. It would be ludicrous to contend that an order authorizing discovery limited to the question of personal jurisdiction is void on the ground of lack of personal jurisdiction, or that a party resisting jurisdiction could refuse to answer jurisdictional discovery with impunity. It is obvious that for the judicial system to function a court must have the authority to compel compliance with its procedural rules.

administer justice in the Commonwealth of Virginia. Insofar as a court may impose more onerous consequences on a party even where subject matter jurisdiction is lacking, it is clear that the ability to charge Harvest Gate with the attorney's fees and costs incurred by Plaintiffs as a condition of raising an otherwise untimely, waivable defense (lack of personal jurisdiction) is well within the Court's authority.⁹

Alternatively, the doctrines of waiver and estoppel also have application here. *McCulley v. Brooks & Co. Gen. Contractors, Inc.*, 295 Va. 583, 590-93 (2018). By invoking and relying on Rule 3:19(b) as a way to avoid default, Harvest Gate affirmatively engaged in a limited waiver sufficient to tax it with Plaintiff's attorney's fees and costs. Put another way, Harvest Gate knew that by invoking Rule 3:19(b) it might have to pay attorney's fees and costs. In doing so it knowingly and voluntarily waived the right to contend that the Court lacked the ability to make it pay any such award. *Heinrich Schepers GmbH & Co., KG v. Whitaker*, 280 Va. 507, 515 (2010) (waiver is a knowing and voluntary relinquishment of a known right). If Harvest Gate wanted to eliminate that risk, it could have taken its chances with default.¹⁰

Estoppel also applies. *See Dominick v. Vassar*, 235 Va. 295, 298 (1988). The invocation of Rule 3:19 by Harvest Gate was an implicit representation that it would abide by the Court's ruling, including the possibility of a ruling that included an award of fees and costs. Had Harvest Gate made known to the Court that it would not pay any fee award that might be granted, the Court would not have permitted Harvest Gate to file an out of time responsive pleading or would

⁹ Rule 3:19(b) is a remedial, rather than punitive, rule. Indeed, it is a vehicle for a party in default to seek relief from its own negligence. Further, fee-shifting under the rule is intended to compensate the blameless party, not to punish the party in default.

¹⁰ The Court does not suggest, in any way, that the waiver here was a general one sufficient to subject Harvest Gate to personal jurisdiction on the merits.

have revoked permission to do so. Having secured the relief it wanted, Harvest Gate is now estopped from contending that it may avoid a material *quid pro quo* related to its escape from a default judgment.¹¹

ORDER

The Court now ORDERS as follows:

1. Plaintiffs' pending request to recover supplemental attorney's fees and costs from Harvest Gate, LLC as set forth in its Motion for Rule to Show Cause dated July 29, 2025, is hereby GRANTED. The amount of \$16,515.00 shall be added to the outstanding Fee Award of \$9,872.50 for a total amount due to Plaintiffs of \$26,387.50 (collectively, the "Revised Fee Award"). The Court has reviewed the applicable bills for Plaintiffs' counsel and has disallowed \$130. The Court finds that the fees being sought were incurred solely as a result of the delay in the filing of a responsive pleading within the meaning of Rule 3:19(b).

2. If Harvest Gate has not tendered the full amount of the Revised Fee Award to counsel for Plaintiff by January 14, 2026, at 5:00 p.m., by wire or certified check payable to Mr. Goodman's law firm, the leave granted to Harvest Gate to file responsive pleadings shall be DEEMED WITHDRAWN without further Order or action by the Court, and the Court will STRIKE Harvest Gate's Motion to Dismiss for Lack of Personal Jurisdiction filed on April 21, 2025, and Harvest Gate shall be in default.

3. Plaintiffs are given leave to seek another, further award of fees and costs from Harvest Gate pursuant to Rule 3:19(b) by separate motion and may submit an order to the Court to have

¹¹ Even if Harvest Gate had formed no intention regarding potential payment at the time it sought relief under Rule 3:19, it may not receive the benefit of the rule without also accepting the burden.

any and all fee and cost awards in this matter reduced to a single, non-merits judgment if they be so advised.


4. Plaintiffs' Motion to Strike and for Entry of Default Judgment filed December 29, 2025, currently noticed for January 16, ~~2025~~²⁰²⁶, is hereby REMOVED FROM THE DOCKET.

5. If Plaintiffs contend that grounds exist for the Court to enter a merits default judgment on the basis of any default that may occur in this case as a result of this Order, they shall file a renewed Motion for Entry of Default with an accompanying brief limited to the question of whether they have adequately alleged personal jurisdiction over Harvest Gate in their Complaint. Harvest Gate may file an opposition brief and is ORDERED that any such opposition shall not be deemed an express or implied waiver of the right to contest personal jurisdiction. No briefs shall exceed ten pages. Plaintiffs' renewed motion and memorandum shall be filed on or before January 30, ~~2025~~²⁰²⁶, and Harvest Gates' opposition, if any, shall be filed fourteen days after service of Plaintiffs' papers. Courtesy copies shall be delivered to the chambers of the undersigned. Any party may request a hearing.

6. Mr. Goodman will please prepare any other and further orders as may be appropriate.

THIS MATTER IS CONTINUED.

January 7, 2026
Fairfax, Virginia



Timothy J. McEvoy, Judge