

UNITED STATES BANKRUPTCY COURT  
 NORTHERN DISTRICT OF INDIANA  
 HAMMOND DIVISION

IN RE:	)	
	)	
BESSIE M MCDONALD,	)	CASE NO. 05-64575 JPK
	)	Chapter 7
Debtor.	)	
*****	)	
GORDON E. GOUVEIA	)	
	)	
Plaintiff,	)	
	)	
v.	)	ADVERSARY NO. 06-6032
	)	
JEAN BUSH	)	
	)	
Defendant.	)	

ORDER FOR HEARING

\_\_\_\_\_ This adversary proceeding was initiated by a complaint filed on February 6, 2006. The Complaint alleges in material part that the defendant Jean Bush received a fraudulent transfer from Bessie M. McDonald, the debtor in case number 05-64575, and prays for the entry of judgment against Jean Bush with respect to that alleged fraudulent transfer. A clerk's entry of default pursuant to Fed.R.Bankr.P. 7055/Fed.R.Civ.P. 55(a) was entered on April 12, 2006. On May 16, 2006, the plaintiff filed a document entitled "Stipulation and Agreement", which was approved by the court's order entered on May 19, 2006. Paragraph 2 of this document states the fact that the plaintiff filed an adversary proceeding against George Bush to recover an alleged fraudulent transfer in the amount of \$5000.00, and paragraph 3 of the document states that the plaintiff filed an adversary proceeding against Jean Bush to recover a fraudulent transfer in the amount of \$15,000.00. Paragraph 4 states the agreement of both George Bush and Jean Bush that they will pay the sum of \$200.00 per month to the plaintiff; however, the manner in which this payment is to be allocated between the alleged liability of George Bush

and the alleged liability of Jean Bush is not stated.<sup>1</sup> Paragraphs 6 and 8 of the Stipulation and Agreement provide for mechanisms by which the defendant is to pay the plaintiff, and paragraph 9 provides that in the event of the Defendant's default for a period in excess of fifteen (15) days, "the Trustee will take the necessary steps to file an Affidavit of Default." All of the foregoing was approved by the court's order.

On May 23, 2006, the court entered its Order Administratively Closing Adversary Proceeding, which closed the adversary proceeding without final order or judgment, and further provided that the adversary proceeding "may be reopened upon motion of the Trustee in order to pursuit the relief requested by the complaint filed herein." The case was closed on the court's docket on May 24, 2006.

On July 14, 2008, the plaintiff filed a Motion for Judgment by Default, which was accompanied by an Affidavit of Default stating that Jean Bush had defaulted under the terms of the Stipulation and Agreement, and paid a total of \$200.00 with respect to the obligations stated in that document. The plaintiff now requests that the court enter judgment by default on the record as it is now constituted.

The court first notes that the Trustee has not requested reopening of the adversary proceeding, as required by the court's order entered May 23, 2006. More importantly, in the court's view, the order entered on May 16, 2006 – signed as it was by the defendants – states that in the event of default, the Trustee can file an Affidavit of Default; however, the agreement is silent as to the specific consequences of default – what is missing is a provision that in the event of default, the plaintiff is entitled to the entry of judgment with respect to the relief requested by the complaint. While perhaps implicit in the agreement, the agreement is not

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<sup>1</sup> Paragraph 5 of the agreement states that "(said) refund constitutes an asset of the bankruptcy estate, pursuant to 11 U.S.C. Section § 541(a) and subject to turnover." How the alleged fraudulent conveyance involves a refund is nowhere evidenced by this record, but nevertheless that is what the Stipulation and Agreement states.

specific enough to allow entry of judgment on the basis of the record as it exists. Moreover, the filing of the Stipulation and Agreement as signed by the defendant arguably constitutes an appearance by the defendant in the case, thereby potentially invoking the 3-day written notice provision of the second sentence of Rule 55(b)(2). The court determines that under the circumstances of this case, the plaintiff need not provide that notice to the defendant, particularly in light of the fact that the court will hold a hearing with notice to the defendant prior to any entry of judgment.

IT IS ORDERED that a hearing will be held pursuant to Fed.R.Bankr.P. 7055/  
Fed.R.Civ.P. 55(b)(2) to determine the relief to which the plaintiff is entitled, on **October 10, 2008, at 10:00 A.M.**

IT IS FURTHER ORDERED that the plaintiff shall file instant a motion to reopen this adversary proceeding in accordance with applicable law and rules, as required by the court's order entered on May 23, 2006.

Dated at Hammond, Indiana on August 29, 2008.

/s/ J. Philip Klingeberger  
J. Philip Klingeberger, Judge  
United States Bankruptcy Court

Distribution:  
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