

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
ODYSSEY GROUP, LLC,	)	CASE NO. 09-30111 HCD
	)	CHAPTER 7
DEBTOR.	)	
	)	
	)	
REBECCA HOYT FISCHER,	)	
Chapter 7 Trustee of Odyssey Group, LLC,	)	
PLAINTIFF,	)	
vs.	)	PROC. NO. 09-3125
	)	
LEGACY CUSTOM MODULAR HOMES, LLC,	)	
DEFENDANT.	)	

Appearances:

Rebecca Hoyt Fischer, Esq., Trustee, 112 West Jefferson Boulevard, Suite 310, South Bend, Indiana 46601-1438; and

Legacy Custom Modular Homes, LLC, *pro se*, 246 Sand Hill Road, Selingsgrove, Pennsylvania 17870.

MEMORANDUM OF DECISION

At South Bend, Indiana, on April 26, 2010.

Before the court is the Motion for Default Judgment filed by the plaintiff Rebecca Hoyt Fischer, Chapter 7 Trustee (“plaintiff” or “Trustee”) of the debtor Odyssey Group, LLC, against the defendant Legacy Custom Modular Homes, LLC (“defendant”). The Trustee originally had filed a Complaint against the defendant. The defendant did not answer the plaintiff’s Complaint or the instant Motion. For the reasons stated below, the court grants the Motion for Default Judgment.<sup>1</sup>

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<sup>1</sup> The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(E).

The Trustee commenced this adversary proceeding with a Complaint for Turnover of Property of the Estate pursuant to 11 U.S.C. § 542, seeking payment for goods the plaintiff sold to the defendant.<sup>2</sup> *See* R. 1. She served the summons and Complaint upon the defendant corporation. The defendant did not respond within the 30-day period required by the summons. Once the Trustee filed an Affidavit of No Answer, Defense or Response and requested an entry of default, the Clerk’s Entry of Default was issued. *See* R. 5, 7; *see also* Fed. R. Bankr. P. 7055; Fed. R. Civ. P. 55(a).

The Trustee then filed a Motion for Default Judgment and attached an Affidavit in Proof of Damages. *See* R. 9. In the Motion, the Trustee provided facts to demonstrate that the underlying allegations in the Complaint justified a request for turnover of a debt in the amount of \$14,813.86 owed to the debtor by the defendant. The Complaint attached a copy of the account statement listing the debt.

#### DISCUSSION

The court finds that the plaintiff has complied with the requirements of Rule 55 of the Federal Rules of Civil Procedure, as incorporated into bankruptcy adversary proceedings by Rule 7055 of the Federal Rules of Bankruptcy Procedure, the rules governing defaults. First, the Trustee duly served the summons and Complaint upon the defendant, to the attention of its Highest Ranking Officer, pursuant to Federal Rule of Bankruptcy Procedure 7004(b)(3). *See In Re Speichert*, 2007 WL 4893499 at \*2 (Bankr. N.D. Ind. 2007) (unpub’d) (accepting service of process on corporation’s “highest ranking officer” as proper method for obtaining valid *in personam* jurisdiction). Second, she complied with Rule 55(a) by establishing the defendant’s default and by requesting the Clerk’s Entry of Default. *See Target Nat’l Bank v. Redmond (In re Redmond)*, 399 B.R. 628, 632 (Bankr. N.D. Ind. 2008) (setting forth mandates of Rule 55(a)). When the

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<sup>2</sup> Section 542 of the Bankruptcy Code states in pertinent part:

[A]n entity that owes a debt that is property of the estate and that is matured, payable on demand, or payable on order, shall pay such debt to, or on the order of, the trustee . . . .

11 U.S.C. § 542(b).

defendant did not answer the Complaint, the Trustee filed an “Affidavit of No Answer, Defense or Response,” verifying that the defendant was properly served with the Complaint, summons and notice of service; that it did not respond; and that the time for response had passed. Because the plaintiff showed, by affidavit, her proper actions and the defendant’s failure to respond, the Clerk of the Court entered a default against the defendants on January 7, 2010. *See* R. 7.

The plaintiff now requests that the court enter a judgment by default, in accordance with Rule 55(b).<sup>3</sup> She has attached an Affidavit in Proof of Damages. *See* R. 9. In the Motion, the Trustee provided facts to demonstrate that the underlying allegations in the Complaint justified a request for turnover of a debt in the amount of \$14,813.86 for goods sold by the debtor to the defendant. Attached to the Complaint, in turn, was a copy of the account statement listing the debt.

Having received the Motion and Affidavit, the court examined the Trustee’s Complaint to determine whether its allegations were well-pled and were sufficient to state a legitimate claim for relief. *See In re Redmond*, 399 B.R. at 633 (citing *In re Taylor*, 289 B.R. 379, 382 (Bankr. N.D. Ind. 2003)). Bankruptcy courts in this circuit require the plaintiff to prove a *prima facie* case under the pertinent section of the Bankruptcy Code before a default judgment is granted. *See id.* (citing cases). The court’s entry of a judgment by default is discretionary. It is appropriate only after the court determines that service was properly made, that the party has defaulted, and that the complaint’s allegations support the relief sought. *See, e.g., El-Yacoubi v. Hetrick (In re Hetrick)*, 379 B.R. 612, 618-19 (Bankr. E.D. Va. 2007).

In this case, the Complaint sought to recover property of the debtor’s bankruptcy estate for distribution to creditors. The Trustee alleged in the Complaint that the debtor’s books and records stated that the defendant owed the debtor \$14,813.86 for goods sold to the defendant. Attached to the Complaint was the account statement reflecting that debt. The Trustee further stated that the defendant had made an initial

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<sup>3</sup> Because the defendant is a corporation, the plaintiff of course is not required to submit an affidavit of non-military status, stating facts demonstrating that the defendant is not in military service, in compliance with the Soldiers’ and Sailors’ Civil Relief Act, 50 U.S.C. App. § 501 *et seq.* *See In re Redmond*, 399 B.R. at 632 (setting forth affidavit requirements). When the defendant is a natural person, however, it is required.

payment to the debtor but failed and refused to make further payments. The court finds that the Complaint's allegations demonstrated a *prima facie* case brought under § 542 of the Bankruptcy Code. See *Krol v. Crosby (In re Mason)*, 386 B.R. 715, 722 (Bankr. N.D. Ill. 2008) (requiring proof that property subject to turnover be property of the estate); *Warsco v. Drew (In re Drew)*, 2007 WL 4879278 at \*1 (Bankr. N.D. Ind. 2007) (unpub'd) (setting forth trustee's duty to demand from one who owed debts to the debtor that the obligor pay the debts to the trustee).

Having demonstrated to the court that service of process was properly made, that the defendant had defaulted, and that the Complaint's allegations were well pled, the Trustee has complied with the procedural requirements of Rule 55(a) and (b). Moreover, because the Complaint's allegations supported the relief sought and the defendants have not offered any response to them, the court finds that a judgment by default is proper. Accordingly, the Trustee's Motion for Default Judgment against the defendant is granted. The defendant is ordered, pursuant to 11 U.S.C. § 542(b), to turn over the sum of \$14,813.86 plus applicable prejudgment interest from the date the adversary proceeding was commenced. See *In re Roti*, 271 B.R. 281, 292-93 (Bankr. N.D. Ill. 2002).

#### CONCLUSION

For the reasons presented in this Memorandum of Decision, the court grants the Motion for Default Judgment filed by the plaintiff Rebecca Hoyt Fischer, Trustee. Judgment is entered in favor of the Trustee and against the defendant Legacy Custom Modular Homes, LLC, in the amount of \$14,813.86 plus applicable prejudgment interest.

SO ORDERED.

/s/ HARRY C. DEES, JR.  
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HARRY C. DEES, JR., JUDGE  
UNITED STATES BANKRUPTCY COURT