

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
MITCHELL WAYNE YOUNTS and	)	CASE NO. 08-32669 HCD
ANDREA NICOLE YOUNTS,	)	CHAPTER 7
	)	
DEBTORS.	)	
	)	
	)	
JACQUELINE SELLS HOMANN, TRUSTEE,	)	
	)	
PLAINTIFF,	)	
vs.	)	PROC. NO. 09-3061
	)	
SUE E. WEAVER,	)	
	)	
DEFENDANT .	)	

MEMORANDUM OF DECISION

At South Bend, Indiana, on June 15, 2010.

Before the court is the Motion for Default Judgment filed by plaintiff Jacqueline Sells Homann, Chapter 7 Trustee, against the defendant Sue E. Weaver, creditor of the chapter 7 debtors. The Trustee requests a judgment by default on the underlying Complaint, which demanded payment of unpaid rents owed to the debtors' bankruptcy estate by the defendant. The defendant has not responded. For the reasons that follow, the court grants the Trustee's Motion for Default Judgment.

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, she commenced the adversary proceeding by filing a Complaint and serving the defendant (and the debtors' bankruptcy counsel) pursuant to Rule 7004(b) of the Federal Rules of Bankruptcy Procedure. The Complaint alleged that the defendant had entered into an Option Agreement for Purchase of Real Estate with the debtors but had stopped the

payments. It further alleged that the defendant did not respond to the Trustee's demand for payment, and requested judgment against the defendant in the amount of the past due payments, \$12,750.00.

When the defendant did not timely answer the Complaint, the Trustee filed a Request for Clerk's Entry of Default, stating that the defendant was served with the summons by first class United States mail; that the summons was not returned to the Trustee; and that the defendant did not appear or respond. The court finds that the Trustee's service to the defendant was appropriate service of process under Rule 7004(b). It further notes that the Trustee's Request contained the necessary information by which the court could make its determination.<sup>1</sup> The Clerk of the Court entered a default against the defendant.

The plaintiff now requests that the court enter a judgment by default, in accordance with Rule 55(b). She has attached an Affidavit describing her unsuccessful attempt to determine whether the defendant is serving in military service.<sup>2</sup> Having found that the Motion and Affidavit complied with the procedural requirements of Rule 55(b), 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 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 DuBois v. Faber (In re Faber)*, 330 B.R. 235, 239 (Bankr. N.D. Ind. 2005); *Capital One Bank v. Bungert (In re Bungert)*, 315 B.R. 735, 736-37 (Bankr. E.D. Wis. 2004); *New Austin Roosevelt Currency Exchange, Inc. v. Sanchez (In re Sanchez)*, 277 B.R. 904, 907 (Bankr. N.D. Ill. 2002). The court's entry of a judgment by

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<sup>1</sup> The Trustee was required to "submit a sworn statement requesting a clerk's entry of default that verifies (a) that the defendant was served properly with the Complaint, summons, and notice of service; (b) that the defendant did not answer, defend, or respond to the Complaint; and (c) that the time for a response had expired. Such an affidavit is mandated under Federal Rule of Civil Procedure 55(a) and Federal Rule of Bankruptcy Procedure 7055." *Target Nat'l Bank v. Redmond (In re Redmond)*, 399 B.R. 628, 632 (Bankr. N.D. Ind. 2008). Nevertheless, the court granted the Request for Clerk's Entry of Default and entered the default against the defendant without the affidavit.

<sup>2</sup> The court presumes that the Trustee sought to validate the defendant's present non-military service by requesting a Military Status Report of the Department of Defense Manpower Data Center, in compliance with the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.App. § 501 *et seq.* The Trustee's action in the companion case *Homann v. McShane (In re Younts)*, Adv. Proc. 09-3060, substantiates this presumption.

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.

In this case, neither the Complaint nor the Motion for Default Judgment sought relief pursuant to a section of the Bankruptcy Code. However, in the Complaint the Trustee, accomplishing her duties to collect property of the bankruptcy estate, demanded the defendant's past due payments. She justified the demand by attaching to the Complaint the agreement to which the parties were bound, a document clearly establishing the debt. The court finds that the Complaint's allegations, combined with the written contractual agreement between the defendant and the debtors, demonstrated a *prima facie* case stating a legitimate claim for relief. *See In re Redmond*, 399 B.R. at 633 (citing cases).

Having demonstrated to the court that service of process was properly made, that the defendant had defaulted, and that the defendant's military status could not be determined, the Trustee has complied with the procedural requirements of Rule 55(b). Moreover, because the Complaint's allegations supported the relief sought and the defendant has not offered any response to them, the court finds that a judgment by default is proper. Accordingly, the court grants the Trustee's Motion for Default Judgment against the defendant and enters judgment by default against the defendant in the amount of \$12,750.00, plus costs in the amount of \$250.00, plus post-judgment interest.

SO ORDERED.

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