

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
JAMES LEE FOREMAN and)	CASE NO. 14-31817 HCD
ELIZABETH INEZ FOREMAN)	CHAPTER 7
DEBTORS)	
)	
)	
JAMES LEE FOREMAN and)	
ELIZABETH INEZ FOREMAN)	
)	
PLAINTIFFS)	
vs.)	PROC. NO. 14-3076
)	
JPMORGAN CHASE BANK, N.A. and)	
CHASE STUDENT LOANS)	
)	
DEFENDANTS)	

Appearances:

M. Josh Petruniw, Esq., attorney for plaintiffs James Lee Foreman and Elizabeth Inez Foreman, 99 West Canal Street, Wabash, Indiana 46992.

JPMorgan Chase Bank, N.A., pro se.

Chase Student Loans, pro se.

MEMORANDUM OF DECISION

At South Bend, Indiana, on April 22, 2015.

Before the court is the Motion for Default Judgment (Motion) and supporting affidavit filed by the plaintiffs James Lee Foreman and Elizabeth Inez Foreman (Foreman or Plaintiffs) against the defendants JPMorgan Chase Bank, N.A. and Chase Student Loans (Chase or Defendants).¹ For the reasons set forth below, the court grants the Motion.

¹The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. §§ 1334 and 157, and Northern District of Indiana Local Rule 200.1. The court has determined this matter is a core pursuant to 28 U.S.C. § 157(b)(2)(I).

Background

The Motion before the court (ECF No. 19) is the second attempt by the Foremans to gain a default judgement against Chase. They filed this adversary proceeding on October 8, 2014. The clerk issued a summons on October 9, 2014, setting an answer date of November 10, 2014. The record shows that on October 15, 2014, the Foremans served defendant Chase Student Loan (ECF No. 4), and on October 16, 2014, served defendant JPMorgan Chase (ECF No. 5) by certified mail as required by Federal Rule of Bankruptcy Procedure 7004(h). The record also shows that Foreman served defendant Chase Student Loans and defendant JPMorgan Bank, in care of CT Corporation System, registered agent, by certified mail on November 13, 2014 (ECF Nos. 6 and 7). The defendants have not filed an answer or other responsive pleading.

On December 15, 2014, the Foremans filed a Motion for Default Judgment (ECF No. 8). The Foremans did not seek the entry of default by the clerk before filing this motion. Due to this procedural omission, the court denied the motion without prejudice on January 14, 2015.

The Foremans next filed an Affidavit for Entry of Default (ECF No. 13) on January 21, 2015. The clerk entered the default of Chase Student Loans (ECF No.14) and JPMorgan Chase Bank, N.A. (ECF No. 15) on February 12, 2015. The BNC² Certificate of Mailing reflects that the BNC sent both defaults to the Defendants on February 14, 2015.

Discussion

The court's entry of a judgment by default is discretionary. *See Sun v. Board of Trustees of U. Of IL*, 473 F.3d 799, 809 (7th Cir. 2007), *cert. denied*, 551 U.S. 1114 (2007). Rule 7055 of the Federal Rules of Bankruptcy Procedure, which governs defaults, applies Rule 55 of the Federal Rules of

²By statute, the court may utilize outside facilities or services relating to the provision of notices and other administrative information to parties. See 28 U.S.C. § 156(c). Federal Rule of Bankruptcy Procedure 2002 permits the court to direct some other person to provide required notices and administrative information. The Bankruptcy Noticing Center, or BNC, is a system that provides centralized production and transmission of electronic and paper notices for all bankruptcy courts of case related documents that are the court's responsibility to notice or serve.

Civil Procedure in adversary proceedings. Civil Rule 55 distinguishes between an “entry of default” and “judgment by default.” See *Lowe v. McGraw-Hill Cos., Inc.*, 361 F.3d 335, 339 (7th Cir. 2004). *Lowe* sets forth a two-step process for a movant: proof of a default and then justification for a judgment by default. See *In re Catt*, 368 F.3d 789, 793 (7th Cir. 2004). With the entry of default by the clerk, Foreman has met the first part of test for default judgment. The Foremans properly served Chase. Chase failed to respond. The court finds Chase is in default.

“Once the default is established, and thus liability, the plaintiff still must establish his entitlement to the relief he seeks.” *In re Catt*, 368 F.3d at 793. This means that the Plaintiffs must make a three part showing that excepting their debt to Chase from discharge would impose an undue hardship. See 11 U.S.C. § 523(a)(8). First, Plaintiffs must show based on their current income and expenses they cannot maintain a minimal standard of living. Second, they must show their present circumstances are likely to persist into the future. Finally, they must show they have attempted repayment in good faith. See *Kreiger v. Educational Credit Management Corp.*, 713 F.3d 882, 883 (7th Cir. 2013) (citing *Brunner v. New York State Higher Education Services Corp.*, 831 F.2d 395, 396 (2nd Cir. 1987).

The record shows the Plaintiff’s debt to Chase is more than \$75,400.³ As of the filing of this adversary proceeding, the Foremans were not in default on this debt. Both Plaintiffs are elderly. James is over 73, Elizabeth over 69. The Foremans are retired. See Schedule I: Your Income. The Foremans suffer from a variety of persistent health problems.⁴ Their monthly income consists of social security, pension, and VA benefits.⁵ As noted on their Chapter 7 Statement of Current Monthly Income and Means-Test Calculation, their income is below the applicable median family income level. Therefore,

³The Foremans are co-signers on student loans made by Chase to their adult child and adult grandchild.

⁴James suffers from decreased circulatory function, diminished hearing and diabetes. Elizabeth suffers from cardiovascular conditions and back pain. Their medical conditions prevent both from working.

⁵Due to exposure to Agent Orange during his service in the Air Force, James receives a 30% to 40% VA disability benefit. He received an honorable discharge.

the presumption of abuse under § 707(b) does not apply in this case. Lacking any response from Defendants the court accepts the unchallenged record established by the Plaintiffs as true.

Conclusion

The court finds the Plaintiffs have met their burden by presenting a prima facie case showing their entitlement to a hardship discharge. Their income and expenses show their inability to maintain a minimal standard of living. The retired Plaintiffs are elderly, and in poor health. Their present circumstances are likely to persist in the future. The absence of default shows the Plaintiffs good faith efforts at repayment. Pursuant to 11 U.S.C. § 523(a)(8) the court finds James Lee Foreman and Elizabeth Inez Foreman are entitled to a hardship discharge of their debt to JPMorgan Chase Bank, N.A. and Chase Student Loans.

SO ORDERED.

/s/ HARRY C. DEES, JR.

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