

ENTERED

January 02, 2025

Nathan Ochsner, Clerk

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

IN RE:	§	
	§	
HDLV CONSOLIDATION, LLC,	§	CASE NO. 24-33540
	§	
Debtor.	§	Chapter 11
	§	
HDLV CONSOLIDATION, LLC,	§	
Plaintiff.	§	
	§	Adv. No. 24-03155
vs.	§	
	§	
JOYSTONA AND OSWALD LEE, <i>ET AL.</i>	§	
Defendant.	§	

**ORDER GRANTING MOTION FOR ENTRY OF
CORRECTED DEFAULT JUDGMENT
[Relates to Doc. Nos. 40, 45 and 48]**

The plaintiff, HDLV Consolidation, LLC (“HDLV”) has filed a Motion for Entry of Default Judgment seeking a declaratory judgment to (i) terminate the timeshare plans governing the Hotel de L’Eau Vive, located at 315 and 327 Tchoupitoulas, New Orleans, Louisiana 70130 and 307 Tchoupitoulas Street (the “Property”), and (ii) permit it to sell the entire Property, including the non-debtor, co-owners’ interests, pursuant to 11 U.S.C. § 363(h) (ECF No. 40). There has been no response filed. For the following reasons, the motion is granted.

PROCEDURAL HISTORY

HDLV is requesting default judgment in this case because no defendant has filed an answer to the complaint. The complaint was filed on August 2, 2024 against more than 1300 defendants. Summons was issued for all defendants on August 7, 2024, August 15, 2024, August 26, 2024 and August 29, 2024. Federal Rule of Bankruptcy Procedure 7012 requires an answer to be filed within 30 days of the issuance of a summons. Plaintiff filed notice that summons was executed on August 20, 2024 on United States’ defendants, and on foreign defendants as set forth on the attached certificate of service at ECF No. 29. Service was also made by publication (ECF No. 36). Defendant Irene Barnard Wilkinson was dismissed from the suit on October 18, 2024. On HDLV’s

request, the clerk entered default against all remaining defendants on November 13, 2024 (ECF No. 39).

BACKGROUND FACTS

HDLV instituted this declaratory judgment action seeking only authority to sell the Property, including the non-debtor, co-owners' interests. In support of these allegations, HDLV states that the Property consists of three separate structures, consisting of 34 units, all developed as timeshare projects in 1989, 1993 and 1998. Each structure was created with a separate owners' association. Accordingly, the Property is subject to three different timeshare declarations as follows: Hotel de L'Eau Vive, a Condominium (Phase I) located at 315 Tchoupitoulas Street, governed by the First Amended and Restated Condominium Declaration and Timeshare Plan dated January 25, 1989 and recorded on January 26, 1989 at CIN 890 and NA 788246; Hotel de L'Eau Vive II, a Condominium (Phase II) located at 327 Tchoupitoulas Street, governed by the Timeshare and Condominium Declaration dated June 9, 1993 and recorded on June 10, 1993 at CIN 70501 and NA 93-24700; and Hotel de L'Eau Vive III Timeshare Condominiums (Phase III) located within The Barwil Building, a Condominium at 307 Tchoupitoulas Street, governed by the Timeshare Declaration dated July 21, 1998 and recorded on July 23, 1998 at CIN 162798 and NA 98-33763. The 34 units are divided into 1,768 timeshare interests held by hundreds of parties, including the debtor in the underlying bankruptcy case, HDLV. Among these, the debtor owns 591 timeshare interests in the Property, encompassing at least one timeshare interest in each of the 34 units, as well units 406 and 407, which are designated as Whole Condominium Units. On April 26, 2024, the city of New Orleans forced the Property to close as a result of safety and permitting issues. HDLV is requesting that it be allowed to terminate the timeshare plans and sell the Property with the proceeds to be split among the co-owners.

JURISDICTION

This Court has jurisdiction pursuant to 28 U.S.C. §§ 141, 157(a) and 1334(b). This is a core proceeding arising under Title 11 of the United States Code as defined in 28 U.S.C. § 157(b)(2)(A), (N) and (O). The motion for default filed by HDLV requests that the Court enter a default judgment pursuant to Federal Rule of Bankruptcy Procedure 7055.¹ A valid service of

¹ Federal Rule of Bankruptcy Procedure 7055 provides: Rule 55 F. R. Civ. P. applies in adversary proceedings. Federal Rule of Civil Procedure 55 provides in part: (a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default. (b) Entering a Default Judgment. (1) By the Clerk. If the

process gives a defendant notice that failure to file an answer puts him at risk of default judgment.² Rule 7004 of the Federal Rules of Bankruptcy Procedure governs proper service of the summons and complaint. The Court finds that service was proper. “[P]roper service of process is a jurisdictional prerequisite to the entry of a default judgment.”³ However, a motion for default due to the defendant’s failure to plead is not in and of itself conclusive of the defendant’s liability. The Court must find a sufficient basis for liability in the pleadings submitted and examine the causes of action set forth in the Complaint.⁴ Whether or not the motion for default is granted is within the Court’s discretion.⁵

LEGAL STANDARD

HDLV requests an entry of default regarding its request for a declaratory judgment. Courts have developed a three-part analysis to determine if a default judgment is proper. The first factor is whether the entry of the default judgment is procedurally warranted. Courts then need to assess the substantive merits of the plaintiff’s claims and determine if there is a sufficient basis in the pleadings for the default judgment. Lastly, the court determines what form of relief the plaintiff should receive.⁶

ANALYSIS

After reviewing HDLV’s motion, the Court concludes that a default judgment is procedurally warranted. First, since all of the defendants have failed to file an answer, there are no material facts in dispute. There is no evidence that the defendants’ silence is the result of a “good faith mistake or excusable neglect.”⁷ The summons was served on the defendants by first class mail, by publication, and through foreign service, and this motion for default was served by electronic service to all ECF users appearing in this suit. The failure of the defendants to respond to either has been noted by the Court. Finally, the Court is unaware of any circumstance that might be a reason to set aside the default judgment. Therefore, HDLV has met the procedural

plaintiff’s claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff’s request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person. (2) By the Court. In all other cases, the party must apply to the court for a default judgment.

² *SUA Ins. Co. v. Buras*, 421 F. App’x 384 (5th Cir. 2011).

³ *Avdeef v. Royal Bank of Scotland, P.L.C.*, 616 F. App’x 665, 672 (5th Cir. 2015)(unpublished).

⁴ *DirectTV, Inc. v. Huynh (In re Huynh)*, 318 F. Sup.2d 1122, 1127 (M.D. Ala. 2005).

⁵ *Alvarado Martinez v. Eltman Law, P.C.*, 444 F. Supp.3d 748 (N.D. Tex, 2020) (citing *United States v. 1998 Freightliner Vin # 1FUYCZYB3WP886986*, 548 F. Supp.2d 381 (W.D. Tex. 2008)).

⁶ *Alvarado Martinez v. Eltman Law, P.C.*, *supra*, at 752.

⁷ *Lindsey v. Prive Corp.*, 161 F.3d 886 (5th Cir. 1998).

requirements for default judgment. When considering a declaratory judgment action, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.”⁸ The Court finds that the claims are supported by the factual allegations, so that there is a substantial controversy between the parties of sufficient immediacy and reality to warrant the requested relief. HDLV has met the requirement for default judgment on its declaratory judgment claim.

THEREFORE, IT IS ORDERED that a default judgment is granted to HDLV Consolidation, LLC against the defendants.

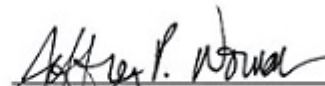
IT IS FURTHER ORDERED that the effective date of this Order shall be December 12, 2024.

IT IS FURTHER ORDERED that the timeshare Declarations governing the Property are terminated.

IT IS FURTHER ORDERED that HDLV Consolidation, LLC is authorized to sell the entire Property, including the defendants’ interests, pursuant to 11 U.S.C. § 363(h), subject to this Court’s approval of any sale process in Case No. 24-33540 pursuant to 11 U.S.C. § 363.

This is a final judgment and fully and finally disposes of all claims and all parties and is appealable. This adversary is closed.

Signed: January 02, 2025



Jeffrey P. Norman
United States Bankruptcy Judge

⁸ *MedImmune Inc. v. Genentech, Inc.*, 549 U.S. 118 (2007).

Submitted by:

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