

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

LUIS A. BUEIZ,

Debtor.

Case No. DG 08-00931

Hon. Scott W. Dales

Chapter 7

LISA E. GOCHÁ,

Plaintiff,

Adversary Proceeding

No. 08-80433

v.

HOSE ROSARIO,

Defendant.

REPORT AND RECOMMENDATION
REGARDING PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT

BACKGROUND

This Report and Recommendation is based upon the Trustee's Motion for Default Judgment against Defendant, Hose Rosario (the "Motion"). In making this Report and Recommendation, I have reviewed the Complaint (annexed hereto as Exhibit A) filed by Lisa E. Gochá ("Trustee") against Hose Rosario ("Defendant"), and have carefully considered the limits on the Bankruptcy Court's jurisdiction, as I am required to do under 28 U.S.C. § 157(b)(2). I make this Report and Recommendation on my own initiative because I have determined, given the nature of the Trustee's claim, that this adversary proceeding is not a core proceeding. In addition, the Defendant has not

appeared or otherwise participated in the bankruptcy case, and therefore has not consented to my entering a final judgment resolving the Trustee's claims. As a result, I do not have the authority under 28 U.S.C. § 157(c) to enter final judgment in response to the Trustee's Motion. This Report and Recommendation constitutes my findings of fact and conclusions of law as contemplated in Fed. R. Bankr. P. 9033.

REPORT

On October 25, 2008, the Trustee filed a Complaint styled as one to recover property of the estate, alleging that the Defendant owed the Debtor Luis A. Bueiz, \$33,600.00 on account of back rent for a house in Chicago that the Defendant allegedly owed to the Debtor on the petition date. See Complaint ¶18 (annexed hereto as Exhibit A). On December 9, 2008, after the Defendant failed to answer or otherwise respond to the Complaint, the Clerk of the United States Bankruptcy Court entered and gave notice of default to the Defendant. See Entry and Notice of Default (annexed hereto as Exhibit B). The Trustee filed a Motion for Default Judgment on January 12, 2009, which I reviewed along with the Complaint and docket in this matter. After my review, I determined that the Complaint sought to liquidate a contract claim based on State-created rights formerly held by the Debtor but now included within the property of the estate under 11 U.S.C. § 541. The Supreme Court in Northern Pipeline Constr. Co. v. Marathon Pipe Line Co., 485 U.S. 50, 102 S. Ct. 2858 (1982), held that the adjudication of such claims, in the absence of consent of the parties, falls within "the judicial power" that may be exercised only by a court with the "essential attributes" of federal judicial power prescribed in Article III of the United States Constitution. See also Thomas v. Union Carbide Agricultural Prods. Co., 473 U.S. 568, 584, 105 S. Ct. 3325, 3334-35

(1985) (Marathon Pipe Line “establishes only that Congress may not vest in a non-Article III court the power to adjudicate, render final judgment, and issue binding orders in a traditional contract action arising under state law, without consent of the litigants . . .”). The Bankruptcy Court lacks such attributes.

In similar matters, I have determined that the Bankruptcy Court lacked jurisdiction to enter final judgment in such a situation, and that it must proceed by recommending that the District Court grant the motion for default judgment, rather than by granting the motion and entering judgment itself. Chief Judge Paul L. Maloney concurs in this analysis, and adopted my recommendations. See Hagan v. Sirbaugh, slip copy, 2009 WL 331534 (W.D. Mich. Feb. 29, 2009); Hagan v. Okony, slip copy, 2008 WL 4722747 (W.D. Mich. Oct. 22, 2008). I follow this same procedure today.

I find that the Complaint in the present adversary proceeding is well-pleaded and satisfies Fed. R. Civ. P. 8(a), made applicable to this adversary proceeding by Fed. R. Bankr. P. 7008. The Defendant’s failure to deny the well-pleaded factual allegations constitutes an admission under Fed. R. Civ. P. 8(b)(6). The allegations, which have been admitted, establish that the Trustee, as representative of the successor to the Debtors’ rights against the Defendant, has a valid claim against the Defendant in the amount of \$33,600.00, and that the Defendant’s debt is due and payable, and not subject to defense or reduction by way of setoff, counterclaim, recoupment or otherwise.

The Trustee represented on the record that the Defendant is neither a minor, nor an incompetent, as contemplated under Fed. R. Civ. P. 55. See Motion for Entry of Default Judgment at ¶7 (annexed hereto as Exhibit C). Similarly, it appears from Exhibit C and the Trustee’s statements in open court, based on the Debtor’s testimony at the

first meeting of creditors, that the Defendant is not in active military service. See Exhibit C; see also 50 U.S.C. App. § 521 (2008). I have reviewed the certificate of service and have no reason to doubt that the Trustee effected proper service of the Summons and Complaint upon the Defendant.

RECOMMENDATION

I recommend that the United States District Court grant the Motion and enter judgment in favor of the Plaintiff Trustee in the amount of \$33,600.00, plus costs in the amount of \$250.00 representing the filing fee in this matter.

The Clerk of the United States Bankruptcy Court for the Western District of Michigan shall enter this Report and Recommendation in the docket of the above-captioned adversary proceeding, and shall transmit a copy of the Report and Recommendation to the United States District Court for the Western District of Michigan. In addition, the Clerk of the United States Bankruptcy Court shall transmit a copy of this Report and Recommendation, including all attachments, to Lisa E. Gochá, Chapter 7 Trustee and Hose Rosario, each at their respective addresses of record, or by ECF transmission where applicable.

Date: April 2, 2009

Scott W. Dales
United States Bankruptcy Judge