

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
SOUTHERN DIVISION**

HELENA CHEMICAL COMPANY, INC.,)
d/b/a HELENA FINANCE,)

Plaintiff,)

v.)

Civil Action No. 1:09cv408-WHA

(wo)

ROBERT J. LISEBY; JENNIFER)
NICHOLE LISEBY, RJL FARM, INC.,)
JNL FARM, INC.,)

Defendants.)

ORDER

This cause is before the court on a Motion for Summary Judgment filed by the Plaintiff (Doc. #18).

In this case, the Plaintiff, Helena Chemical Company, Inc. d/b/a Helena Finance, seeks to collect amounts due the Plaintiff as a result of a default on a Promissory Note. In support of the Motion for Summary Judgment on its claim, the Plaintiff has provided evidence of the Promissory Note; the Change in Terms of Agreement, which increased the principal amount of the loan; and evidence of its requests for admissions to which no defendant responded or objected. *See* Exhibits A, B, C, D, and E. The Plaintiff has not, however, submitted evidence as to the total amount owed, or the amount of costs or reasonable attorneys fees sought by the Plaintiff.

On July 13, 2009, this court entered an Order to show cause why the Plaintiff's Motion for Summary Judgment ought not be granted. The only response to the court's Order was a suggestion of bankruptcy by one defendant, J&N Lisenby Farms.

The court issued an Order for all parties other than J&N Lisenby Farms to show cause why J&N Lisenby Farms ought not be dismissed without prejudice, and the remaining defendants be given additional time in which to respond to the Motion for Summary Judgment. Only the Plaintiff responded to the court's Order. The Plaintiff agreed to the dismissal of J&N Lisenby Farms, but objected to the additional time for responding to the Motion for Summary Judgment.

J&N Lisenby Farms has been dismissed without prejudice from this case by separate Order. The remaining, non-bankrupt Defendants (hereinafter "the Defendants"), have not responded to the Motion for Summary Judgment.

A district court cannot base the entry of summary judgment on the mere fact that the motion was unopposed, but, rather, must consider the merits of the motion. *U.S. v. One Piece of Real Property Located at 5800 SW 74th Ave., Miami, Fla.*, 363 F.3d 1099, 1101 (11th Cir. 2004). The district court need not *sua sponte* review all of the evidentiary materials on file at the time the motion is granted, but must ensure that the motion itself is supported by evidentiary materials and must review all of the evidentiary materials submitted in support of the motion for summary judgment. *Id.* at 1101-02. Accordingly, the court will review the evidentiary materials presented by the Plaintiff in accordance with Rule 56 of the Federal Rules of Civil Procedure.

The party asking for summary judgment "always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The Plaintiff has met its burden in this case

as to the issue of liability on the promissory note by supporting its motion with documentary evidence of the Promissory Note, the Change in Terms of Agreement, and requests for admission which were not responded to, or objected to, by the Defendants.

Once the moving party has met its burden, Rule 56(e) of the Federal Rules of Civil Procedure "requires the nonmoving party to go beyond the pleadings and by [its] own affidavits, or by the 'depositions, answers to interrogatories, and admissions on file,' designate 'specific facts showing that there is a genuine issue for trial.'" *Id.* at 324. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party. Fed. R. Civ. P. 56(e).

By failing to file any evidence in response to the Motion for Summary Judgment, the Defendants have failed to meet their burden. Further, the court has reviewed the evidentiary materials submitted by the Plaintiff and finds no question of fact as to any material issue as to liability raised by the Plaintiff as a ground for summary judgment.

Accordingly, it is hereby ORDERED as follows:

1. The Motion for Summary Judgment (Doc. #18) is GRANTED and judgment is entered in favor of the Plaintiff and against Robert J. Lisenby; Jennifer Nichole Lisenby; RJL Farm, Inc.; and JNL Farm, Inc. on the issue of liability under the promissory note and change in terms of agreement.
2. On or before September 8, 2009, the Plaintiff is to submit evidence to the court as to the amount owed by the Defendants, and the Plaintiff's requested costs and reasonable attorneys' fees.
3. The Defendants are given until September 18, 2009 to file any response they may

wish to file to the Plaintiff's request for costs and reasonable attorneys' fees.

Done this 27th day of August, 2009

/s/ W. Harold Albritton
W. HAROLD ALBRITTON
SENIOR UNITED STATES DISTRICT JUDGE