

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION**

PNC BANK, N.A.,

Plaintiff,

v.

Case No: 6:13-cv-408-Orl-36KRS

**STARLIGHT PROPERTIES &
HOLDINGS, LLC, CIRRUS CARE,
INC., SHAMEEM ALI, WEST OAKS
COMMERCE PARK CONDOMINIUM
ASSOCIATION, INC. and GRANT
STREET CORPORATION,**

Defendants.

ORDER

This cause comes before the Court on the Report and Recommendation of Magistrate Judge Karla R. Spaulding, filed on April 25, 2014 (Doc. 41). In the Report and Recommendation, Magistrate Judge Spaulding recommends that Plaintiff PNC Bank, N.A.'s ("PNC") Renewed Motion for Final Default Judgment ("Renewed Motion for Default Judgment") (Doc. 33) be granted in part and denied in part. *See* Doc. 41. No party has objected to the Report and Recommendation and the time to do so has expired.

Pursuant to Federal Rule of Civil Procedure 55(a), default was entered against Defendant Grant Street Corporation ("Grant Street") on April 19, 2013, against Defendant West Oaks Commerce Park Condominium Association, Inc. ("West Oaks") on May 14, 2013, and against Defendants Shameem Ali ("Ali"), Cirrus Care, Inc. ("Cirrus"), and Starlight Properties & Holdings, LLC ("Starlight") on June 26, 2013. Docs. 18, 21, 28. On November 26, 2013, PNC filed its Renewed Motion for Default Judgment pursuant to Federal Rule of Civil Procedure 55(b)(2). Doc. 33. After Defendants failed to respond or enter an appearance, Magistrate Judge

Spaulding scheduled a hearing on the Renewed Motion for Default Judgment. Doc. 34. Ali appeared at the hearing on behalf of himself and, purportedly, Cirrus and Starlight, and he requested that the Magistrate Judge grant him, Starlight, and Cirrus 30 days to respond to the Renewed Motion for Default Judgment or to file a motion for relief from the defaults. Doc. 37; Doc. 41 at 3. Magistrate Judge Spaulding granted Ali's request both orally at the hearing and in a subsequent written order, providing him, Starlight, and Cirrus up to and including February 24, 2014 to respond to the Renewed Motion for Default Judgment or to file a motion for relief from the defaults. Doc. 38; Doc. 41 at 3. Copies of the written order were mailed by the Clerk to each Defendant, but the mailings to Ali and Cirrus were returned as undeliverable. Doc. 39. Accordingly, pursuant to the Magistrate Judge's instruction, copies were mailed to Ali, Starlight, and Cirrus via certified mail, return receipt requested at an alternative address. *Id.* Court records show that the mailing was received and signed for by one Esther Lucas. To date, no Defendant has filed a response to the Renewed Motion for Default Judgment (or any other document) or entered an appearance in this action.

Upon review, the Court is in agreement with the Magistrate Judge that PNC has adequately established that: (i) Starlight is liable for breach of the Promissory Note, as amended by the Change in Terms Agreement (Count I); (ii) Ali and Cirrus are liable for breach of their respective Commercial Guaranties (Count II); and (iii) PNC is entitled to entry of a final judgment of foreclosure against all Defendants and an order to conduct a foreclosure sale of the property commonly known as 13650 West Colonial Drive, Unit 10, Building B, Winter Garden, FL (Count III). *See* Doc. 41 at 9–13. The Court is also in agreement with the Magistrate Judge's determination that PNC is entitled to damages in the form of unpaid principal, interest, and late charges under the Promissory Note, the Change in Terms Agreement, and the Commercial

Guaranties. *See id.* at 13–14. The Court further agrees that PNC is entitled to an award of attorney’s fees against Starlight, Ali, and Cirrus pursuant to the terms of the Promissory Note, the Change in Terms Agreement, and the Commercial Guaranties, but that the fee amount requested must be reduced for the reasons discussed by the Magistrate Judge. *See id.* at 14–20. However, an additional 0.2 hour of work by attorney John A. Anthony on March 21, 2013, was not deducted by the Magistrate Judge, and should be deducted, because that time was spent reviewing the Magistrate Judge’s first order to show cause. *See Doc. 33-3 at 7.* As the Magistrate Judge explained, time spent related to the orders to show cause is not compensable because it was the result of deficient pleading by counsel. *See Doc. 41 at 16–18.* Accordingly, the attorney’s fee award will be reduced to \$5,172.50. Finally, the Court agrees with the Magistrate Judge that PNC is entitled to an award of \$2,026.21 in costs against Starlight, Ali, and Cirrus. *See id.* at 20–22.

Therefore, after careful consideration of the Report and Recommendation of the Magistrate Judge, in conjunction with an independent examination of the court file, the Court is of the opinion that the Magistrate Judge’s Report and Recommendation should be adopted, confirmed, and approved in all respects.

Accordingly, it is hereby **ORDERED** and **ADJUDGED**:

1. The Report and Recommendation of the Magistrate Judge (Doc. 41) is adopted, confirmed, and approved in all respects and is made a part of this Order for all purposes, including appellate review.
2. PNC’s Renewed Motion for Default Judgment (Doc. 33) is **GRANTED in part and DENIED in part** as follows:
 - a. Starlight is liable for breach of the Promissory Note (Count I);

- b. Cirrus and Ali are liable for breach of the Commercial Guaranty Agreements (Count II);
- c. Entry of a Final Judgment of Foreclosure against Defendants and an order to conduct a foreclosure sale of the property commonly known as 13650 West Colonial Drive, Unit 10, Building B, Winter Garden, FL is appropriate (Count III)
- d. PNC is awarded damages against Starlight, Ali, and Cirrus, jointly and severally, in the form of unpaid principal, interest, and late charges under the Promissory Note, the Change in Terms Agreement, and the Commercial Guaranties. Within **FOURTEEN (14) DAYS** from the date of this Order, PNC shall submit a notice to the Court indicating the amount of unpaid principal, interest, and late charges as of the date of submission of the notice and showing how it was calculated. If the Court finds the total amount of unpaid principal, interest, and late charges noticed by PNC to be properly calculated, the Court will include the total amount in the judgment.
- e. Except as noted in the Report and Recommendation and in this Order, the Court finds the hourly rate and hours expended to be reasonable. Therefore, PNC is awarded damages against Starlight, Ali, and Cirrus, jointly and severally, in the total amount of \$7,198.71, which represents \$5,172.50 in attorney's fees and \$2,026.21 in costs.
- f. It is further ordered and adjudged that Starlight, Ali, and Cirrus shall complete under oath Florida Rule of Civil Procedure Form 1.977 (Fact Information Sheet), including all required attachments, and serve it on

PNC's attorney within **FORTY-FIVE (45) DAYS** from the date of the final judgment. Failure to obey this Order may subject the parties to contempt of court.

3. Within **FOURTEEN (14) DAYS** from the date of this Order, PNC shall tender the original promissory notes at issue in this case to the Clerk of Court for cancellation.
4. Within **FOURTEEN (14) DAYS** from the date of this Order, PNC shall submit a proposed Final Judgment which incorporates the amounts awarded in this Order, including unpaid principal, interest, and late charges calculated through the date of submission. The proposed Final Judgment should be emailed to Chambers_FLMD_honeywell@flmd.uscourts.gov.
5. The Clerk of Court is **DIRECTED** to mail a copy of this Order to Starlight, Cirrus, Ali, West Oaks, and Grant Street at the following addresses:

Starlight Properties & Holding, LLC
c/o Shameem D. Ali, R.A.
13650 W. Colonial Drive, Suite 190
Winter Garden, FL 34787

Shameem D. Ali
13650 W. Colonial Dr., Suite 190
Winter Garden, FL 34787

Cirrus Care, Inc.
c/o Shameem Ali, Registered Agent
13650 W. Colonial Dr., #190
Winter Garden, FL 34787

West Oaks Commerce Park Condominium Association, Inc.
c/o Gary L. Hagel, R.A.
6721 Precourt Drive
Orlando, FL 32809

Grant Street Corporation
c/o Robert D. Trost, R.A.
3041 Tindall Acres Road

Kissimmee, FL 34744

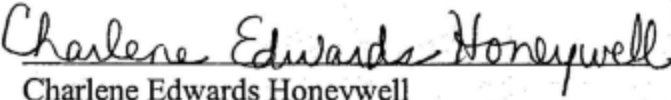
In addition to mailing a copy of this Order to the above addresses, the Clerk of Court is **DIRECTED** to mail a copy of this Order to Starlight, Cirrus, and Ali at the following alternative addresses:

Starlight Properties & Holdings, LLC
ATTN: Shameem D. Ali, Registered Agent
12950 W. Colonial Dr.
Winter Garden, FL 34787

Shameem D. Ali
12950 W. Colonial Dr.
Winter Garden, FL 34787

Cirrus Care, Inc.
ATTN: Shameem D. Ali, Registered Agent
12950 W. Colonial Dr.
Winter Garden, FL 34787

DONE and **ORDERED** in Orlando, Florida on June 9, 2014.


Charlene Edwards Honeywell
United States District Judge

Copies furnished to:

Counsel of Record
Unrepresented Parties
United States Magistrate Judge Karla R. Spaulding