

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

BMO HARRIS BANK, NA,

Plaintiff,

v.

Case No. 6:16-cv-2238-Orl-37KRS

DTL TRANSPORTATION, INC.,

Defendant.

ORDER

Plaintiff BMO Harris Bank, NA (“**BMO**”) initiated this action by filing a five-count Complaint against Defendant DTL Transportation, Inc. (“**DTL**”). (Doc. 1) Specifically, Plaintiff requests: (1) injunctive relief (“**Count I**”); (2) specific performance (“**Count II**”); (3) replevin (“**Count III**”); breach of a Master Vehicle and Lease Agreement and six Schedule A’s (collectively, “**Lease**”) (“**Count IV**”); and (5) breach of a Loan and Security Agreement (“**LSA**”) (“**Count V**”). (*Id.* at 7-12.) After obtaining the Clerk’s entry of default (Doc. 18), BMO now requests default judgment against DTL, seeking injunctive relief, replevin, and damages based on DTL’s breach (“**Motion**”). (Doc. 26, pp. 21-22.)

On referral, U.S. Magistrate Judge Karla R. Spaulding recommends that the Court grant the Motion in part and award BMO money damages, interest, and attorneys’ fees. (Doc. 27 (“**R&R**”).) As an initial matter, Magistrate Judge Spaulding notes that, despite repeated invitations to do so, BMO did not specifically address the legal elements of Counts I-III in its Motion, and, thus, has abandoned those claims (“**Abandoned**

Claims”). (*Id.* at 5 n.2.) Hence, she recommends that the Court not permit BMO another opportunity to seek default judgment on the Abandoned Claims, and cabins her R&R to only Counts IV-V. (*Id.* at 5.)

As to Counts IV-V, Magistrate Judge Spaulding concludes that: (1) by virtue of DTL’s default, DTL entered into a valid Lease and LSA with GE TF Trust (BMO’s predecessor-in-interest), obligating DTL to pay monthly rental for leased equipment; (2) DTL breached the Lease and LSA by failing to make all outstanding payments; (3) BMO may recover damages from the breach, which include the principal amount due and owing, interest, and late charges; (4) BMO is entitled to immediate possession of the vehicles that DTL retained under the MLA and Schedules (“**Retained Units**”) (*see* Doc. 26, p. 7); and (5) DTL is obligated to pay BMO’s attorneys’ fees and costs incurred in enforcing the MLA, Schedules, and LSA. (*See id.* at 5-8.)

The parties did not object to the R&R, and the time for doing so has now passed. As such, the Court has examined the R&R only for clear error. *See Wiand v. Wells Fargo Bank, N.A.*, No. 8:12-cv-557-T-27EAJ, 2016 WL 355490, at *1 (M.D. Fla. Jan 28, 2016); *see also Marcort v. Prem, Inc.*, 208 F. App’x 781, 784 (11th Cir. 2006). Finding no clear error, the Court finds that the R&R is due to be adopted in its entirety.

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. U.S. Magistrate Judge Karla R. Spaulding’s Report and Recommendation (Doc. 27) is **ADOPTED, CONFIRMED**, and made a part of this Order.
2. BMO Harris Bank, NA’s Second Renewed Motion for Default Judgment (Doc. 26) is **GRANTED IN PART** to the extent specified in this Order.

3. DTL Transportation, Inc. is **DIRECTED** to produce the Retained Units to BMO Harris Bank NA by **September 27, 2017**. If DTL fails to do so, BMO may file a motion for replevin of these units.
4. BMO Harris Bank, NA is **DIRECTED** to provide a proposed form of final order with interest computed up to and including the date of this Order.
5. BMO Harris Bank, NA may file a Bill of Costs and a motion for assessment of attorneys' fees computed up to and including the date of this Order.
6. The Clerk is **DIRECTED** to:
 - a. Enter judgment in favor of Plaintiff BMO Harris Bank, NA and against Defendant DTL Transportation, Inc. on Counts IV-V of the Complaint (Doc. 1, ¶¶ 52-57); and
 - b. Close the file.

DONE AND ORDERED in Chambers in Orlando, Florida, on September 14, 2017.




ROY B. DALTON JR.
United States District Judge

Copies to:
Counsel of Record

