

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

SUNTRUST BANK,

Plaintiff,

v.

Case No: 6:17-cv-177-Orl-41TBS

**INK SLINGERS AIRBRUSHING, INC.,
SOUTHCORP ENTERPRISES, INC. and
GARY G. GILLSTEDT,**

Defendants.

ORDER

THIS CAUSE is before the Court on Plaintiff's Renewed Motion for Default Judgment of Foreclosure and Request for Appointment of Special Master to Conduct Foreclosure Sale. ("Motion," Doc. 20). United States Magistrate Judge Thomas B. Smith submitted a Report and Recommendation (Doc. 21), in which he recommends that the Motion be granted.

After a *de novo* review, and noting that no objections were timely filed, the Court agrees with the analysis set forth in the Report and Recommendation. Assuming the factual allegations of the Complaint (Doc. 1) are true, as is required for determining entitlement to default judgment, *see Nishimatsu Constr. Co. v. Hous. Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975),¹ Plaintiff has sufficiently established Defendants' liability for the Small Business Administration Loan and the Demand Loan. However, as noted in Judge Smith's Report and Recommendation, the Bank must tender the original promissory notes for cancellation before the Court enters a Default

¹ Decisions of the Fifth Circuit entered before October 1, 1981, are binding on the courts of the Eleventh Circuit. *Bonner v. City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981).

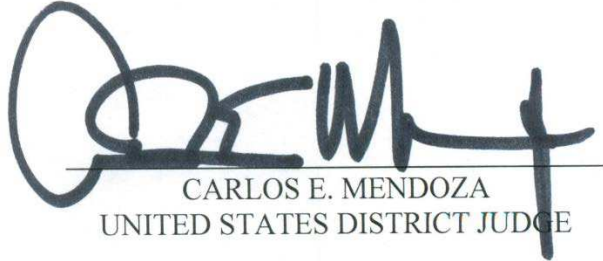
Judgment against Defendants and the Special Master conducts the foreclosure sales. (Doc. 21 at 8); *see also Deutsche Bank Nat. Trust Co. v. Huber*, 137 So. 3d 562, 564 (Fla. 4th DCA 2014) (“Because a promissory note is a negotiable instrument, a plaintiff seeking to foreclose on a defendant *must produce the original note* (or provide satisfactory explanation of the failure to produce) *and surrender it to the court* or court clerk *before* the issuance of a final judgment in order to take it out of the stream of commerce.”).

Therefore, it is **ORDERED** and **ADJUDGED** as follows:

1. The Report and Recommendation (Doc. 21) is **ADOPTED** and **CONFIRMED** and made a part of this Order.
2. As set forth herein, Plaintiff’s Renewed Motion for Default Judgment of Foreclosure and Request for Appointment of Special Master to Conduct Foreclosure Sale (Doc. 20) is **GRANTED**.
3. The Court appoints Jason Rosenthal as Special Master to conduct the foreclosure sales.
4. However, the foreclosure sales shall not be conducted until the Court receives the original promissory notes for (1) the Small Business Administration Loan made to Ink Slingers Airbrushing, Inc. and Southcorp Enterprises, Inc. and guaranteed by Gary Gillstedt and (2) the Demand Loan made to Southcorp Enterprises, Inc. and guaranteed by Ink Slingers Airbrushing, Inc. and Gary Gillstedt. Plaintiff shall file the original promissory notes with the Clerk of Court **on or before July 3, 2017**.
5. Thereafter, the Court will enter a Default Judgment of Foreclosure. Upon the Court’s entry of the Default Judgment of Foreclosure, the foreclosure sales may be

conducted pursuant to the terms set forth in the Court's Default Judgment of Foreclosure.

DONE and **ORDERED** in Orlando, Florida on June 12, 2017.



CARLOS E. MENDOZA
UNITED STATES DISTRICT JUDGE

Copies furnished to:

Counsel of Record