

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 09-60343-CIV-ZLOCH

SUNTRUST BANK,

Plaintiff,

DEFAULT FINAL JUDGMENT

vs.

GREGORY A. BAUM,

Defendant.

THIS MATTER is before the Court upon Plaintiff Suntrust Bank's Motion For Default Final Judgment (DE 6). The Court has carefully reviewed said Motion and the entire court file and is otherwise fully advised in the premises.

Defendant Gregory A. Baum was duly served with a copy of the Summons and Complaint on March 26, 2009, and has failed to file a response to Plaintiff's Complaint (DE 1) within the time prescribed by law. By prior Order (DE 5), the Court entered Default against him, and Plaintiff now moves for Default Final Judgment.

The well-pleaded allegations made in Plaintiff's Complaint (DE 1) are deemed to have been admitted by Defendant by virtue of his default. Cotton v. Mass. Mut. Life Ins. Co., 402 F.3d 1267, 1277-78 (11th Cir. 2005) (citations omitted). Thus, Defendant executed a financial instrument (hereinafter "Note") obligating him to repay a \$400,000.00 loan by the terms stated therein. DE 1, ¶ 5; DE 1, Ex. A. Defendant failed to make the payments as

required by the Note, and Plaintiff is thus entitled to accelerate the amount due. DE 1, ¶ 7; DE 1, Ex. A, p. 4. For clarity of the record, the Court notes that this action is before the Court pursuant to its diversity jurisdiction, for which Florida law supplies the rule of decision. Under Florida law, “[a]ll attacks upon [a financial instrument], or the debt it represents, must be made by way of affirmative defenses as to which the burden of proof is on the defense.” Haycook v. Ostman, 397 So. 2d 743, 744 (Fla. Dist. Ct. App. 1981). Having default upon the Complaint filed here, Defendant waives his affirmative defenses to the Note and the debt it represents.

Accordingly, after due consideration, it is

ORDERED AND ADJUDGED as follows:

1. The Court has jurisdiction over the Parties hereto and the subject matter herein;

2. Plaintiff Suntrust Bank’s Motion For Default Final Judgment (DE 6) be and the same is hereby **GRANTED**

3. Pursuant to Federal Rules of Civil Procedure 55 and 58, Default Final Judgment be and the same is hereby **ENTERED** in favor of Plaintiff Suntrust Bank and against Defendant Gregory A. Baum;

4. Plaintiff does have and recover from Defendant the sum of \$400,200.00 plus interest accruing at the rate of 3.25% per annum from July 16, 2008, to the date of this Default Final Judgment, together with interest thereon at the rate of 0.55% per annum, for

all of which let execution issue; and

5. Plaintiff does have and recover from Defendant the sum of \$350.00 in costs, for all of which let execution issue.

DONE AND ORDERED in Chambers at Fort Lauderdale, Broward County, Florida, this 22nd day of April, 2009.



WILLIAM J. ZLOCH
United States District Judge

Copies furnished:

All Counsel of Record