

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA
SAVANNAH DIVISION

FEDERAL DEPOSIT INSURANCE
CORPORATION, as Receiver for FIRST
NATIONAL BANK,

Plaintiff,

v. 4:13-cv-99

COBALT PARTNERS, LLC; ALBERTO
ALVAREZ; ADAM BEELER; RODNEY
M. COOK, JR.; ALLEN C. HARPER;
WILLIAM M. TUTTLE, II; and
CHARLES K WERK,

Defendants.

ORDER

I. INTRODUCTION

Plaintiff Federal Deposit Insurance Corporation ("FDIC") moves the Court for entry of default judgment against two defendants, Cobalt Partners, LLC ("Cobalt") and Rodney M. Cook, Jr. ("Cook"). ECF No. 36. In a subsequent reply brief, FDIC amends its request to seek only a Clerk's entry of default as to Cobalt and Cook. ECF No. 41 at 5. The Court **GRANTS** the motion as to Cobalt because it has failed to plead or otherwise defend the lawsuit. The Court **DENIES** the motion as it relates to Cook because he has actively defended himself in the litigation since his untimely Answer.

A. Factual Background

On January 3, 2008, Cobalt executed a promissory note to First National Bank in the principal sum of \$1,000,000. ECF No. 1

at 2. Each of the individual Defendants personally guaranteed Cobalt's debt. *Id.* Defendants defaulted on the note and guarantees by not making payments as promised. *Id.* at 30. DIST. OF GA. *eb*

B. Procedural Background

The FDIC filed this lawsuit on April 19, 2013. *See* ECF No. 1. The Clerk issued summonses to Cobalt and Cook on the same day. ECF Nos. 2; 5. Cobalt was served on May 15, 2013. ECF No. 15. Cook was served on May 7, 2013. ECF No. 18.

To date, Cobalt has failed to plead or otherwise defend against the lawsuit. ECF No. 36 at 2.

Cook filed an untimely Answer on June 17, 2013. ECF No. 23. Cook also participated in the Rule 26 conference, ECF No. 31, and filed a timely reply to FDIC's motion for entry of default judgment. ECF No. 37.

II. ANALYSIS

Federal Rule of Civil Procedure 55(a) provides that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default."

Cobalt has failed to file an Answer or otherwise defend this case and so it is in default.

Cook filed an untimely Answer, but he did not fail to plead. *See* ECF No. 23. Furthermore, Cook has otherwise defended himself in this lawsuit by participating in the Rule 26 conference and timely replying to

FDIC's motion for default judgment. ECF Nos. 31; 37. Therefore, an entry of default of Cook is inappropriate.

III. CONCLUSION

The Court **GRANTS** FDIC's motion for entry of default as to Cobalt and **ORDERS** the Clerk to enter Cobalt's default. The Court **DENIES** FDIC's motion for entry of default as to Cook.

This 16 day of October 2013.



B. AVANT EDENFIELD, JUDGE
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA