

**U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION**

|  |   |   |
|--|---|---|
| CIT Small Business Lending Corporation | ) |   |
|  | ) |   |
| Plaintiff,                             | ) | Case Number: 08-6542                    |
|  | ) |   |
| v.                                     | ) | Assigned Judge: Honorable Judge Charles |
|  | ) | R. Norgle, Sr.                          |
| 727-29 West Howard, LLC, Smithfield    | ) |   |
| Gardens, Inc., and Richard T. Rinaolo, | ) | Designated Magistrate Judge: Honorable  |
|  | ) | Magistrate Judge Nolan                  |
| Defendants.                            | ) |   |

**MOTION FOR JUDGMENT BY DEFAULT**

Plaintiff CIT Small Business Lending Corporation (“CIT”) moves this Honorable Court to enter a judgment by default pursuant to Fed. R. Civ. P. 55(a) against Defendants 727-29 West Howard, LLC, Smithfield Gardens, Inc. and Richard T. Rinaolo and in support of its motion states the following:

1. On November 13, 2008, CIT filed its complaint against the Defendants in the United States District Court for the Northern District of Illinois, Eastern Division.

2. Fed R. Civ. P. 4(e)(2)(A) states, in pertinent part, as follows:

“...an individual . . . may be served in a judicial district of the United States by: (2) doing any of the following: (A) delivering a copy of the summons and of the complaint to the individual personally...”

3. On November 23, 2008 Defendant Richard T. Rinaolo was personally served with the Summons and Complaint. Attached as Exhibit A is a copy of the pertinent return of service affidavit.

4. Mr. Rinaolo was required to answer or otherwise plead to the Complaint on or before December 15, 2008.

5. Fed. R. Civ. P. 4(h)(1) states, in pertinent part:

“...a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served: (1) in a judicial district of the United States: . . . or (B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and--if the agent is one authorized by statute and the statute so requires--by also mailing a copy of each to the defendant; or...”

6. On November 20, 2008, Christopher T. Garrett, special process server, license number 117-001119, served the Summons and Complaint upon 727-29 West Howard, LLC by leaving a true and correct copy of these documents with Rebecca A. Castelli, an officer, managing agent or authorized agent of 727-29 West Howard, LLC. Attached as Exhibit B is a copy of the pertinent return of service affidavit.

7. 727-29 West Howard, LLC was required to file an answer to the Complaint or otherwise plead on or before December 10, 2008.

8. On December 3, 2008, Mr. Garrett also served the Summons and Complaint upon Smithfield Gardens, Inc. by leaving a true and correct copy of these documents with Debbie Welch, an officer, managing agent or authorized agent of Smithfield Gardens, Inc. Attached as Exhibit C is a copy of that pertinent return of service affidavit.

9. Smithfield Gardens, Inc. was required to file an answer to the Complaint or otherwise plead on or before December 23, 2008.

10. Fed. R. Civ. P. 55(a) states, in pertinent part, as follows:

“When 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.

11. To date, all three Defendants, Richard T. Rinaolo, 727-29 West Howard, LLC and Smithfield Gardens, Inc. have failed to appear, answer or otherwise plead to the Complaint.

**WHEREFORE**, Based on the above, CIT prays for the entry of judgment by default against the Defendants in the amount of \$514,940.57 plus contractual interest, late charges, costs

and contractual attorney's fees in connection with this action, any other expenses accrued through the date of judgment and such other relief as this court deems just.

The CIT Small Business Lending Corporation,  
Plaintiff

/s/ Agata P. Karpowicz  
By: One of its attorneys.

Bruce N. Menke (ARDC #6187337)  
Agata P. Karpowicz (ARDC #6180323)  
Mandell Menkes LLC  
333 West Wacker Drive, Suite 300  
Chicago, Illinois 60606  
Telephone: (312) 251-1000