

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**
Southern Division

FILED
U.S. DISTRICT COURT
DISTRICT OF MARYLAND
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AT GREENBELT

UNITED STATES OF AMERICA,

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Plaintiff,

*

v.

Case No.: GJH-18-2532

*

ANN A. MCKIM-FREEMAN, et al.,

*

Defendants.

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* * * * *

MEMORANDUM OPINION

Plaintiff United States of America (the "Government") brought this action to collect an assessment made against Defendants Ann A. McKim-Freeman and Keith C. Freeman (the "Individual Defendants") and to foreclose the related federal tax liens on two properties located in Maryland. ECF No. 9. Defendants AG Investments, LLC ("AG") and Bank of America, NA ("Bank of America") were named as defendants because they may have claimed an interest in the properties that are the subject of this action. *Id.* ¶ 6. Pending before the Court is the Government's Motion for Default Judgment as to Defendant AG Investments ("Motion for Default Judgment"), LLC, ECF No. 42, and the Government's Motion for Entry of Consent Judgment and Order of Sale as to Individual Defendants ("Motion for Entry of Consent Judgment"), ECF No. 43. No hearing is necessary. *See* Loc. R. 105.6 (D. Md. 2016). For the following reasons, the Government's Motion for Default Judgment is granted and the Government's Motion for Entry of Consent Judgment is granted.

I. BACKGROUND

On August 18, 2008, a delegate of the Secretary of the Treasury of the United States made an assessment of \$26,199.00 in unpaid federal income taxes for the year 2004 against Individual Defendants. ECF No. 9 ¶ 7. Despite notice and demand for payment of the tax liability by the Internal Revenue Service, Individual Defendants failed to pay the federal income taxes assessed against them. *Id.* ¶ 8. As of August 27, 2018, Individual Defendants owed \$63,208.18 in unpaid federal income taxes and associated penalties and interest. *Id.* ¶ 10. Moreover, by reason of the federal income tax assessment, federal tax liens arose and attached to all property and property rights that Individual Defendants owned or thereafter acquired, including property located at 4047 Edgewood Road, Baltimore, Maryland and 12108 Sondberg Lane, Bowie, Maryland (the “Properties”). *Id.* ¶ 14.

On August 17, 2018, the Government filed a Complaint in this Court, ECF No. 1, which it subsequently amended on October 10, 2018, ECF No. 9. The Amended Complaint seeks to receive a judgment in favor of the Government and against the taxpayers in the amount of the unpaid tax liability and to foreclose the liens on the Properties. *Id.* In addition to Individual Defendants, the Government named AG and Bank of America as Defendants in this action because those parties may have claimed an interest in the Properties, and the Government sought to foreclose the liens on the Properties free and clear of other interests. *Id.* ¶¶ 15, 16.

On October 15, 2018, a process server served the Summons and Amended Complaint on David Cohen, the registered agent for Defendant AG. ECF No. 13. Defendant AG failed to file a responsive pleading, so on November 29, 2018, the Clerk entered a default against Defendant AG. ECF No. 19. On December 27, 2019, Defendant Bank of America filed an Answer in which

it stated that it had no interest in the Properties and therefore did not object to the relief requested by the Government in the Amended Complaint. ECF No. 45 ¶ 9.

On December 16, 2019, the Government filed a Motion for Default Judgment requesting that the Court enter default judgment against Defendant AG. ECF No. 42. Defendant AG has not filed a response. Also on December 16, 2019, the Government filed a Motion for Entry of Consent Judgment indicating that the Government and Individual Defendants had come to an agreement regarding the tax liabilities and the Properties. ECF No. 43.

II. MOTION FOR DEFAULT JUDGMENT

The Government requests that the Court enter default judgment against Defendant AG. “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.” Fed. R. Civ. P. 55(a). “A defendant’s default does not automatically entitle the plaintiff to entry of a default judgment; rather, that decision is left to the discretion of the court.” *Educ. Credit Mgmt. Corp. v. Optimum Welding*, 285 F.R.D. 371, 373 (D. Md. 2012). Although “[t]he Fourth Circuit has a ‘strong policy’ that ‘cases be decided on their merits,’” *Choice Hotels Intern., Inc. v. Savannah Shakti Carp.*, No. DKC-11-0438, 2011 WL 5118328, at *2 (D. Md. Oct. 25, 2011) (citing *United States v. Shaffer Equip. Co.*, 11 F.3d 450, 453 (4th Cir. 1993)), “default judgment may be appropriate when the adversary process has been halted because of an essentially unresponsive party[.]” *Id.* (citing *S.E.C. v. Lawbaugh*, 359 F. Supp. 2d 418, 421 (D. Md. 2005)). “Upon default, the well-pled allegations in a complaint as to liability are taken as true,” *Lawbaugh*, 359 F. Supp. 2d at 422, and the court must determine whether the unchallenged factual allegations constitute a legitimate cause of action, *Agora Fin., LLC v. Samler*, 725 F. Supp. 2d 491, 494 (D. Md. 2010).

Here, Defendant AG has failed to respond or otherwise dispute the allegations in the Amended Complaint. Thus, the Court accepts the representations in the Amended Complaint as true and finds that the Government is entitled to a default judgment in its favor declaring that Defendant AG does not have an interest in the Properties, such that foreclosure sales shall be free and clear of any interests of Defendant AG and Defendant AG shall not receive any proceeds from the foreclosure sales. The Government's Motion for Default Judgment is therefore granted.

III. MOTION FOR ENTRY OF CONSENT JUDGMENT

The Government's Motion for Entry of Consent Judgment states that the Government and Individual Defendants have agreed to entry of final judgment as to Individual Defendants' joint federal income tax liabilities for 2004 and to the foreclosure of the federal income tax liens on the Properties. ECF No. 43. The Government therefore asks that the Court enter the Consent Judgment attached to the Motion, which enters judgment against Individual Defendants in the amount of \$38,189.24, together with all interest and penalties that will continue to accrue, and it decrees that the Government holds valid and subsisting tax liens with respect to those tax liabilities that attach to and encumber all property and property rights of Individual Defendants, including their interest in the Properties. ECF No. 43-1 ¶¶ 1, 2. The Consent Judgment also provides that Individual Defendants' interest in the Properties may be foreclosed, the Properties shall be sold free and clear of any right, title, lien, claim, or interest of all parties in accordance with the Order of Sale attached to the Motion, and the proceeds of the sale shall be distributed in accordance with the Order of Sale. *Id.* ¶ 3. The Government and Individual Defendants have agreed to this judgment, and Defendants AG and Bank of America have no interest in the Properties, so the Government's Motion for Entry of Consent Judgment is therefore granted. The Court will enter the Consent Judgment and Order of Sale as agreed to by the parties.

IV. CONCLUSION

For the foregoing reasons, the Government's Motion for Default Judgment is granted and the Government's Motion for Entry of Consent Judgment is granted. A separate Order shall issue.

Date: June 24, 2020



GEORGE J. HAZEL
United States District Judge