

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Bakko Aviation, LLC,

Civil No. 16-742 (DWF/LIB)

Plaintiff,

v.

DEFAULT JUDGMENT ORDER

KK Air, LLC and Justin Smith,

Defendants.

On July 22, 2016, Defendants KK Air, LLC and Justin Smith were served with Plaintiff's original Summons and Complaint. (Doc. Nos. 9, 10.) On August 29, 2016, the Clerk of the Court entered default against Defendants for failure to plead or defend the action. (Doc. No. 13.) On September 6, 2016, Plaintiff filed a Motion for Default Judgment, and the Court scheduled a November 4, 2016 hearing on the motion. (Doc. Nos. 14, 16.) The day before the hearing, this Court received, by e-mail, a document styled "Defendant Justin Smith's Motion to Dismiss for Lack of Personal Jurisdiction Pursuant to F.R.C.P. Rule 12(b)(2) and for Failure to State a Claim Upon Which Relief Can Be Granted Pursuant to F.R.C.P. Rule 12(b)(6)." (*See* Doc. No. 19.) Mr. Smith, acting *pro se*, did not properly file said document and made no appearance at the November 4, 2016 hearing. (Doc. Nos. 19, 20.)

On November 17, 2016, the Court ordered Defendant Justin Smith to pay Plaintiff's incurred attorney fees and costs associated with bringing the Motion for Default Judgment within thirty days and reserved ruling on the pending motions. (Doc.

No. 24.) Defendant Justin Smith failed to pay any fees or costs. At the Court's request, Plaintiff filed a letter brief on January 5, 2017 responding to the jurisdictional issues raised by Defendant Justin Smith. (Doc. No. 25.) On April 17, 2017, the Court granted Plaintiff's Motion for Default Judgment against Defendant KK Air and granted Plaintiff leave to amend the Complaint to include more detailed allegations related to Smith's liability under an alter ego theory. (Doc. No. 28.)

Plaintiff filed the Amended Complaint on June 15, 2017, incorporating additional allegations against Defendant Smith. (Doc. No. 37.) The same day, Defendants KK Air, LLC and Smith were served by mail. (Doc. No. 37; Doc. No. 37-1.) On October 13, 2017, a Clerk's Entry of Default was filed with respect to both defendants. (Doc. No. 42.) This matter is now before the Court on Plaintiff's Motion for Default Judgment against Justin Smith, (Doc. No. 44), and Application to the Court and Affidavit for Entry of Default Judgment By the Court, (Doc. No. 46).¹ In the latter document, Plaintiff asks the Court to "enter default judgment, pursuant to Rules 54 and 55(b)(2) of the Federal Rules of Civil Procedure, against . . . Justin Smith, individually, for the Defendant's failure to plead, answer, or otherwise defend, and a judgement [sic] amount against all Defendants, jointly and severally, in the amount of \$736,721.10." (Doc. No. 46 at 1.)

¹ In light of the procedural history of this case and Plaintiff's clarification on the record during the July 30, 2018 hearing, the Court shall treat Plaintiff's Motion for Default Judgment against Justin Smith as a motion seeking default judgment against both defendants.

ORDER

The Court hereby finds as follows:

1. Based on Plaintiff's uncontroverted allegations, Defendant Smith entered into a number of aircraft leases utilizing undercapitalized entities as his alter-ego and, in this case, the acts of KK Air, LLC were, in fact, the acts of Justin Smith.
2. Plaintiff is entitled to the equitable remedy of piercing the corporate veil to hold Defendant Justin Smith liable for damages alleged against Defendant KK Air, LLC.
3. Defendant Justin Smith is not a minor, nor an incompetent person, nor a member of the military service of the United States.
4. Defendants KK Air, LLC and Justin Smith entered into a contract ("Lease") with Plaintiff Bakko Aviation, LLC to lease from Plaintiff an airplane, more fully described as: Piper PA46-500TP, Serial Number 4697295, Registration Number N1065Y ("the Aircraft").
5. Defendants KK Air, LLC and Justin Smith are in breach under the terms of the Lease with Plaintiff Bakko Aviation, LLC.
6. As of July 30, 2018, Defendants KK Air, LLC and Justin Smith are indebted to Bakko Aviation for the outstanding balance of \$738,682.78, which includes \$25,000 for failure to pay the security deposit, \$67,227.19 for failed monthly payments, \$122,500 for failed payment of 1750 hours of engine reserved time, a total of \$381,925.75 in repairs to bring the Aircraft back to in-service condition, interest from July 22, 2016 through July 30, 2018 of \$120,638.35, and attorney fees of \$21,391.49.

Based upon the submissions before the Court, and the Court being otherwise duly advised in the premises, **IT IS HEREBY ORDERED** that:

1. Plaintiff Bakko Aviation, LLC's Motion for Default Judgment Against Justin Smith (Doc. No. [44]) and Application to the Court and Affidavit for Entry of Default Judgment By the Court (Doc. No. [46]) are **GRANTED** under Rule 55(b)(2) of the Federal Rules of Civil Procedure.

2. Defendants KK Air, LLC and Justin Smith are jointly and severally liable for breach of contract in the amount of \$738,682.78.

LET JUDGMENT BE ENTERED ACCORDINGLY.

Dated: July 30, 2018

s/Donovan W. Frank
DONOVAN W. FRANK
United States District Judge