

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
OXFORD DIVISION**

CATERPILLAR FINANCIAL SERVICES CORPORATION **PLAINTIFF**

v. **CIVIL ACTION NO. 3:16-CV-089-MPM-RP**

STEPHEN RAY TURNER D/B/A TURNER DIRT **DEFENDANT**

STEPHEN RAY TURNER D/B/A TURNER DIRT **THIRD PARTY PLAINTIFF**

v.

**THOMPSON MACHINERY COMMERCE
CORPORATION and CATERPILLAR FINANCIAL
SERVICES CORPORATION THIRD PARTY** **DEFENDANTS**

ORDER

This cause comes before the court on the motion of plaintiff Caterpillar Financial Services Corporation (“Caterpillar”) for default judgment or, alternatively, for summary judgment. Defendant Stephen Ray Turner d/b/a Turner Dirt (“Turner”) has failed to respond in opposition to the motion, nor has he sought additional time to do so. This court, having considered plaintiff’s submissions and the record in this case, concludes that the motion for default judgment is well taken and should be granted.

This case is, by all appearances, a rather routine collection action, which was filed by Caterpillar Financial Service Corporation (“Caterpillar”) against Turner for failure to make the payments required under the lease of certain heavy equipment. Turner initially failed to respond to Caterpillar’s complaint, and a default was entered by the clerk against him. However, Caterpillar later agreed to set aside the default after Turner retained counsel in this matter.

Turner's new counsel initially mounted a rather aggressive defense, asserting counterclaims against both Caterpillar and Thompson Machinery Commerce Corporation ("Thompson"), a Caterpillar affiliate which sold the equipment at issue.¹

In his counterclaims, Turner alleged that some of the equipment at issue in this case had been defectively manufactured by Caterpillar and that Thompson had failed to repair it, rendering them each liable for breach of warranty. However, it later became apparent that Turner had no interest in actually pursuing his claim, and, in a June 22, 2017 order, this court granted Caterpillar's motion to dismiss Turner's counterclaim. In so ruling, this court observed that there was serious doubt whether Turner intended to take any actions at all in this case, either offensively or defensively. This court accordingly warned Turner that, if he did not take steps to defend against this lawsuit, then he would see default entered against him once again as to Caterpillar's collection action. Specifically, this court wrote that:

This court also notes that its order today only relates to the *counterclaim* filed by Turner, and not to his defense of the original collection action filed by Caterpillar. Turner remains a defendant to that collection action, and this court emphasizes that he still has the opportunity to defend himself against it, if he can bring himself to act. If Turner does not act, however, then he will see default entered against him once again.

[June 22 order at 7].

Turner has chosen not to heed this court's admonitions that he must act. Indeed, the docket reveals no actions taken by Turner since the June 22 order, and he has, once again, failed to file a response to the instant motion for default judgment. In light of this fact, Caterpillar's motion for default judgment is clearly meritorious, and it will be granted.

¹It appears that Thompson is more accurately regarded as a third party defendant, but this court will refer to both it and Caterpillar as counter-defendants, for simplicity's sake.

It is therefore ordered that Caterpillar's motion for default judgment is granted. Caterpillar is hereby awarded \$ 667,162.27 on its collection action and \$16,658.78 in attorneys' fees, for a total recovery of \$683,821.05.

A separate judgment will be entered this date pursuant to Fed. R. Civ. P. 58, and this case is closed.

So ordered, this, the 21st day of November, 2017.

/s/ Michael P. Mills
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI