

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIREAFP 105 Corp.

v.

Civil No. 11-cv-44-JL

Southern New Hampshire
Hospitality, LLC,
Anthony DiLorenzo, and
Kevin Bowden**SUMMARY ORDER**

This matter is before the court on plaintiff AFP 105 Corp.'s Motion for Default Judgment Against Kevin Bowden. Bowden was served with process on April 5, 2011, but has not pled or otherwise defended this action. The Clerk of Court therefore entered default against him on June 9, 2011.

The claims against Bowden's co-defendants Southern New Hampshire Hospitality Investors, LLC, Southern New Hampshire Hospitality, LLC, and Anthony Dilorenzo remain pending before the court, as do the co-defendants' counterclaims. As a result, AFP 105's motion for default judgment is governed by Federal Rule of Civil Procedure 54(b), which provides that "the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay." See Villalobos v. Deutsche Bank Nat'l Trust Co., No. 09-cv-1450, 2011 WL 2415543, *1 (W.D. Wash. June 14, 2011) ("Rule 54 applies to all final judgments,

including default judgments."); Amer. Fam. Mut. Ins. Co. v. Coleman, No. 09-cv-523, 2009 WL 4015521, *1-2 (S.D. Ill. Nov. 19, 2009) (holding that request for default judgment while claims against co-defendants remained pending was governed by Rule 54(b)). AFP 105's motion does not address whether there is "no just reason for delay" in this case. Under these circumstances, and in the absence of any argument on that point, the court declines to enter a default judgment against Bowden, particularly given the Court of Appeals' instruction that "Rule 54(b) should be employed with great circumspection." Gonzales Figueroa v. J.C. Penney Puerto Rico, Inc., 568 F.3d 313, 318 n.3 (1st Cir. 2009).

For the foregoing reasons, the court DENIES the motion (document no. 92) without prejudice. AFP 105 Corp. may reapply for default judgment against Bowden when all claims involving all parties have been resolved, or upon a showing that there is "no just reason for delay" under Rule 54(b).

SO ORDERED.



Joseph N. Laplante
United States District Judge

Dated: October 7, 2011

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