

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

WILMINGTON SAVINGS FUND
SOCIETY, FSB, d/b/a CHRISTIANA
TRUST AS OWNER TRUSTEE OF THE
RESIDENTIAL OPPORTUNITIES
TRUST III,

Plaintiff,

v.

No. 1:18-cv-00344-PJK-SCY

ANTHONY MARTINEZ, GLORENE L.
MARTINEZ a/k/a GLORENE L.
GARRISON, BANK OF THE WEST,
and DESERT RIDGE TRAILS
HOMEOWNERS ASSOCIATION, INC.,

Defendants.

**ORDER GRANTING MOTION FOR DEFAULT JUDGMENT
ON FORECLOSURE CLAIMS**

THIS MATTER came on for consideration of Plaintiff’s Motion for Default Judgment on Foreclosure Claims filed July 26, 2018. ECF No. 13. Upon consideration thereof, the Motion is well-taken and should be granted. Plaintiff shall submit a form of judgment consistent with this order.

In this suit on a note secured by a mortgage on real property, Plaintiff seeks an in-rem judgment against the property, not against any defendant personally. Pl.’s Mot.

for Default J. at 2 (ECF No. 13). Plaintiff is in possession of the note indorsed in blank and was assigned the mortgage. Id. at 4, ¶ 9. Various returns of service indicate that the complaint was served on all defendants. ECF Nos. 4–8. Defendant Bank of the West disclaimed any interest in the underlying real property. ECF No. 10. A clerk’s entry of default was entered against the remaining defendants: Anthony Martinez, Glorene L. Martinez a/k/a Glorene L. Garrison (hereinafter Glorene L. Martinez), and Desert Ridge Homeowners Association, Inc. ECF No. 12.

Defendant Glorene L. Martinez filed an untimely response (lacking any certificate of service) to the present motion for default judgment. ECF No. 16. Although Plaintiff indicated that it also sought summary judgment in the event defendants cured any default, Pl.’s Mot. for Default J. at 2 n.1 (ECF No. 13), it is unnecessary to resolve the motion on that basis as to the amount of the promissory note, the interest, and other charges.

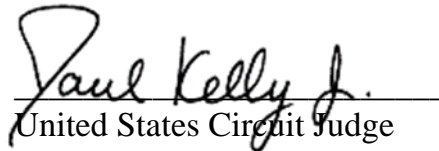
A clerk’s entry of default may be set aside for good cause. Fed. R. Civ. P. 55(c). In deciding this issue, courts consider the willfulness of any default, whether prejudice to the opponent would occur, and whether the movant has a meritorious defense. See Watkins v. Donnelly, 551 F. App’x 953, 958 (10th Cir. 2014) (relying on Dierschke v. O’Cheskey (In re Dierschke), 975 F.2d 181, 183 (5th Cir. 1992)). Here, Ms. Martinez has no explanation for failure to respond to the complaint in this action. Though she contends that she was awaiting a loan modification in response to a state court action, she admits that she consented to the dismissal of that action without any resolution. As to the merits, she contends that she is entitled to a nine-month period of redemption contrary to the mortgage. See Pl.’s Compl., Exhibit A (ECF No. 1, at 28, ¶ 24) (redemption period

of one month after judicial sale). Plaintiff is entitled to relief. No hearing is necessary, as the amount of the promissory note, the interest, and other charges, Pl.'s Mot. for Default J. at 5, ¶ 15 (ECF No. 13), are liquidated sums capable of calculation. See Marcus Food Co. v. DiPanfilo, 671 F.3d 1159, 1171–72 (10th Cir. 2011); United States v. Craighead, 176 F. App'x 922, 925 (10th Cir. 2006). Insofar as attorney's fees sought, although Plaintiff is entitled to reasonable attorney's fees by the terms of the Note, the court should assess reasonableness. Xlear, Inc. v. Focus Nutrition, LLC, 893 F.3d 1227 (10th Cir. 2018); Raja v. Ohio Sec. Ins. Co., 305 F. Supp. 3d 1206, 1236–38 (D.N.M. 2018). Based upon the supporting material, Pl.'s Mot. for Default J., Ex. 2, at 2 (ECF No. 13), the court will grant summary judgment, satisfied with the reasonableness of those fees.

NOW, THEREFORE, IT IS ORDERED that Plaintiff's Motion for Default Judgment on Foreclosure Claims filed July 26, 2018 (Doc. 13) is granted.

Plaintiff shall submit a proposed form of judgment consistent with this order within ten (10) days, which shall include an appropriate order appointing a special master. See Pl.'s Mot. for Default J. at 9 (ECF No. 13).

DATED this 17th day of September 2018, at Santa Fe, New Mexico.


United States Circuit Judge
Sitting by Designation