

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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FIRST DATA MERCHANT SERVICES
CORPORATION,

Plaintiff,

- against -

OXFORD MANAGEMENT SERVICES, INC.,

ORDER TO SHOW CAUSE

07-CV-2083 (RRM)(ETB)

Defendant.

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MAUSKOPF, United States District Judge:

Plaintiff First Data Merchant Services Corp. (“FDMS” or “Plaintiff”) brought this action against Oxford Management Services, Inc. (“Oxford” or “Defendant”), seeking damages for Defendant’s alleged breach of contract. Plaintiff’s moved for summary judgment, and by Memorandum and Order (Doc. No. 44), granted summary judgment in favor of plaintiff. The Court denied the award of damages without prejudice to renew, following a conference with the Court and the submission of sufficient evidence to support plaintiff’s damage request.

Shortly after the Court’s grant of summary judgment, Oxford’s counsel sought, and was granted permission, to withdraw. (*See* Doc. Nos. 46, 53.) The Court directed Oxford to retain new counsel by July 8, 2011.¹ To date, no counsel has entered a notice of appearance, and as a corporate entity, Oxford may not represent itself. In its Answer (Doc. No. 4), Oxford alleged various counterclaims which remain pending.

Plaintiff now seeks an Order declaring Oxford in default, dismissing its counterclaims for failure to prosecute, and allowing plaintiff to renew its request for damages and the entry of judgment upon submission of additional evidence. (Doc. No. 54.)

¹ Pursuant to the letter seeking to withdraw, Oxford’s counsel indicated that Oxford had ceased operations on March 17, 2011. (Doc No. 46.)

Based on its conduct, particularly, its failure to secure counsel and its lack of diligence in pursuing its counterclaims, Oxford appears to have abandoned this action and has failed diligently to prosecute its counterclaims.

In an abundance of caution, the Court hereby **ORDERS Oxford to Show Cause in writing, by April 9, 2012 by letter filed electronically with this Court and served on counsel for plaintiff, whether it intends to pursue its counterclaims or otherwise defend this action. Failure to so do will result in this Court entering default judgment against defendant Oxford in favor of plaintiff FDMS on plaintiff's claims on which this Court has already granted summary judgment pursuant to Rule 55 of the Federal Rules of Civil Procedure ("FRCivP"), and dismissing all of defendant Oxford's counterclaims pled herein for failure to prosecute pursuant to this Court's authority under FRCivP 16.**

This Court FURTHER ORDERS that plaintiff FDMS serve a copy of this Order to Show Cause on defendant Oxford by April 3, 2012 in any manner specified in FRCivP 4, and immediately thereafter electronically file proof of such service with the Court.

SO ORDERED.

Roslyn R. Mauskopf

Dated: Brooklyn, New York
March 30, 2011

ROSLYNN R. MAUSKOPF
United States District Judge