

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D19-0557

BLACK POINT ASSETS, INC., as
Trustee of the 2237 Thornbrook
Drive Land Trust and STAR
POINTE CAPITAL, LLC, as
Trustee of the 2237TD Land
Trust,

Appellants,

v.

OCWEN LOAN SERVICING, LLC,

Appellee.

On appeal from the Circuit Court for Duval County.
A.C. Soud, Jr., Judge.

December 17, 2019

PER CURIAM.

Black Point Assets, Inc., as Trustee of the 2237 Thornbrook Drive Land Trust and Star Pointe Capital, LLC, as Trustee of the 2237TD Land Trust, appeal from a default final judgment of foreclosure in favor of Ocwen Loan Servicing, LLC, following the entry of a judicial default. We reverse.

After being served with Ocwen's complaint, Black Point and Star Pointe, through counsel, filed a request for extension of time to respond. The court entered an Agreed Order extending the time to file a response to the complaint by 45 days. The court also scheduled a case management conference for November 8, 2018. Black Point and Star Pointe timely sought another extension of time to respond to the complaint, citing pending settlement negotiations between Ocwen, Black Point and Star Pointe. The scheduled case management conference was held on November 8, 2018. At that time, the court denied Black Point and Star Pointe's second request for an extension of time to respond to the complaint and entered a judicial default against Black Point and Star Pointe, concluding that they "were given extension on 9-21-18 for 45 days. Ran out on 11-4-18." The court also entered a judicial default against the remaining defendants at that time and set the matter for a final hearing on January 24, 2019.

Black Point and Star Pointe sought to vacate the default against them, asserting that the default was void because they had not been given adequate notice and because the default had been entered in violation of Florida Rule of Civil Procedure 1.500(b). At the January 24, 2019, final hearing, the court denied the motion to vacate the default and entered a default final judgment of foreclosure against all named defendants. Black Point and Star Pointe now appeal.

As the Appellants correctly argue, Florida Rule of Civil Procedure 1.500(b) authorizes the entry of a default by the court, but when a party has filed or served any document in the action, "that party must be served with notice of the application for default." Consequently, a trial court reversibly errs if it enters a judicial default without providing the required notice to the defendant of the application for default. *See Turan v. Nationstar Mortgage, LLC*, 245 So. 3d 959 (Fla. 5th DCA 2018); *Yellow Jacket Marina, Inc. v. Paletti*, 670 So. 2d 170, 171 (Fla. 1st DCA 1996); *see also Rangel v. MidFirst Bank*, 187 So. 3d 289, 290-91 (Fla. 4th DCA 2016) (holding the trial court's "self-executing" default language included in prior order denying defendant's motion to dismiss is not permitted under Rule 1.500, which requires notice of the application for default).

Here, it is undisputed that Black Point and Star Pointe were not given notice in advance of the November 8, 2018, case management conference that a judicial default would be entered. A violation of rule 1.500(b) warrants the setting aside of a default without consideration of whether or not a meritorious defense was presented or whether excusable neglect was established. *See Yellow Jacket Marina*, 670 So. 2d at 170. The judicial default against Black Point and Star Pointe was improvidently entered, hence, the final judgment based on that default must be set aside and this matter remanded for further proceedings.

REVERSED and REMANDED.

LEWIS, ROBERTS, and OSTERHAUS, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

Shawn G. Brown of Kaye Bender Rembaum, P.L., Tampa, for Appellants.

Kimberly S. Mello of Greenberg Traurig, P.A., Orlando; Vitaliy Kats and Joseph H. Picone of Greenberg Traurig, P.A., Tampa, for Appellee.