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5 UNITED STATES BANKRUPTCY COURT
6 EASTERN DISTRICT OF CALIFORNIA
7

8 In re) Case No. 09-41025-E-13
9)
10 KATHLEEN J. HAUGHTON,)
11 Debtor.)
12)
13 KATHLEEN J. HAUGHTON,) Adv. Pro. No. 12-2612
14 Plaintiff,) DCN: None Provided
15 v.)
16 AMERICAN GENERAL FINANCE, aka)
17 SPRINGLEAF FINANCIAL,)
18 Defendant.)
19)

20 This memorandum decision is not approved for publication and may
21 not be cited except when relevant under the doctrine of law of the
22 case or the rules of claim preclusion or issue preclusion.
23

24 MEMORANDUM OPINION AND DECISION
25 DENIAL OF ORDER MOTION FOR ENTRY OF DEFAULT JUDGMENT

26 The default of American General Finance, nka Springleaf
27 Financial was entered by the court on December 3, 2012 (Dckt. 9).
28 Plaintiff Kathleen J. Haughton, the Debtor, filed her Motion for
Entry of Default Judgment on December 6, 2012, and the declaration
of Michael O. Hayes in support of the Motion. Dckts. 10, 11. The
declaration attests to service of the Complaint and that no
responsive pleading has been filed in this Adversary Proceeding.

1 The Motion for Entry of Default Judges states with
2 particularity (Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007) the
3 following grounds upon which judgment is based:

4 A. An unnamed "Defendant and their [sic] designed agent for
5 service of process were duly served..." with the
6 complaint, summons, and notice of status conference.

7 B. No Answer or responsive pleading has been filed by the
8 unnamed "Defendant."

9 C. The Declaration of Michael O. Hayes is filed as the
10 evidentiary grounds in support of the Motion for Entry fo
11 Default Judgment.

12 D. Judgment is requested against American General Finance
13 and unnamed other persons (identified as *et al.*)
14 determining that their claim is unsecured, has been
15 discharged, and that the debt is no longer an encumbrance
16 on the Plaintiff's residence.

17 **OBTAINING A DEFAULT JUDGMENT**

18 Federal Rule of Civil Procedure 55 and Federal Rule of
19 Bankruptcy Procedure 7055 govern default judgments. *In re McGee*,
20 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006). Obtaining a default
21 judgment is a two-step process which requires: (1) entry of the
22 defendant's default, and (2) entry of a default judgment. *Id.* at
23 770.

24 Even when a party has defaulted and all requirements for a
25 default judgment are satisfied, a claimant is not entitled to a
26 default judgment as a matter of right. 10 Moore's Federal Practice
27 - Civil ¶ 55.31 (Daniel R. Coquillette & Gregory P. Joseph eds.
28 3rd ed.). Entry of a default judgment is within the discretion of

1 the court. *Eitel v. McCool*, 782 F.2d 1470, 1471 (9th Cir. 1986);
2 *In re McGee*, 359 B.R. 764, 770 (B.A.P. 9th Cir. 2006) (citing *In re*
3 *Kubick*, 171 B.R. 658, 659-60 (B.A.P. 9th Cir. Alaska 1994).
4 Default judgments are not favored, as the judicial process prefers
5 determining cases on their merits whenever reasonably possible. *Id.*
6 at 1472. Factors which the court may consider in exercising its
7 discretion include:

- 8 (1) the possibility of prejudice to the plaintiff,
- 9 (2) the merits of plaintiff's substantive claim,
- 10 (3) the sufficiency of the complaint,
- 11 (4) the sum of money at stake in the action,
- 12 (5) the possibility of a dispute concerning material facts,
- 13 (6) whether the default was due to excusable neglect, and
- 14 (7) the strong policy underlying the Federal Rules of Civil
15 Procedure favoring decisions on the merits.

16 *Eitel v. McCool*, 782 F.2d at 1471-72 (citing 6 Moore's Federal
17 Practice - Civil ¶ 55-05[s], at 55-24 to 55-26 (Daniel R.
18 Coquillette & Gregory P. Joseph eds. 3rd ed.)); *In re Kubick*, 171
19 B.R. at 661-662.

20 In fact, before entering a default judgment the court has an
21 independent duty to determine the sufficiency of Plaintiff's claim.
22 *Id.* at 662. Entry of a default establishes well-pleaded
23 allegations as admitted, *In re McGee*, 359 B.R. at 772, but factual
24 allegations that are unsupported by exhibits are not well pled and
25 cannot support a claim. *Id.* at 774. Thus, a court may refuse to
26 enter default judgment if Plaintiff did not offer evidence in
27 support of the allegations. See *id.* at 775. Finally, Federal Rule
28 of Civil Procedure 9(b), made applicable through Federal Rule of

1 Bankruptcy Procedure 7009, raises the bar by requiring that
2 allegations of fraud be stated with particularity.

3 In *Kubick*, the Bankruptcy Appellate Panel held that the
4 Bankruptcy Court must exercise its independent duty, arising under
5 Federal Rule of Bankruptcy Procedure 55(b)(2), to determine the
6 sufficiency of the plaintiff's claim before entering a default
7 judgment. *In re Kubick*, 171 B.R. at 662. In *Kubick*, the
8 plaintiff-creditor filed a complaint objecting to Debtor's
9 discharge. *Id.* at 171 B.R. at 659. The debtor did not file a
10 response, and the court granted the plaintiff's motion for default
11 judgment without a hearing. *Id.* On appeal, the Bankruptcy
12 Appellate Panel held that the plaintiff's complaint could not
13 support a default judgment, because it merely recited the statutory
14 elements without sufficiently alleging elements of the claim. *Id.*
15 at 662. In vacating the judgment, the Bankruptcy Appellate Panel
16 held that the Bankruptcy Court must exercise its discretion to
17 determine the legal sufficiency of the complaint before entering a
18 default judgment. *Id.*

19 Furthermore, in *McGee* the Bankruptcy Appellate Panel affirmed
20 that the Bankruptcy Court may require Plaintiff to present evidence
21 in support of its complaint. *In re McGee*, 359 B.R. at 775. In
22 *McGee*, the creditor filed a complaint to establish its claim as
23 nondischargeable under Federal Rule of Bankruptcy Procedure
24 532(a)(2)(B). *Id.* at 767. When the defendant-debtor failed to
25 appear, the Bankruptcy Court entered a default. *Id.* at 768.
26 However, the court denied a motion for default judgment, because
27 the creditor did not offer direct proof supporting an essential
28 element of their claim: that they relied on the defendant's

1 fraudulent misrepresentations. *Id.* On appeal, the Bankruptcy
2 Appellate Panel affirmed, holding that merely *pleading* a *prima*
3 *facie* case, without proving one, does not entitle the creditor to
4 a default judgment. *Id.* at 774. The Bankruptcy Court properly
5 used its discretion in requiring competent, admissible evidence
6 before granting a default judgment. *Id.* at 775.

7 **DISCUSSION**

8 This court takes seriously the requirements under the Federal
9 Rules of Civil Procedure and Federal Rules of Bankruptcy Procedure
10 requiring that motions state with particularity both the grounds
11 upon which the relief is requested and the relief itself. Fed. R.
12 Civ. P. 7(b) and Fed. R. Bankr. P. 7007, 9014. Taken on its face,
13 the only grounds stated for a judgment in this Adversary Proceeding
14 are that the summons and complaint were served on some unnamed
15 defendant and that some unnamed defendant did not file a responsive
16 pleading. These "particular grounds" are not sufficient for a
17 judgment determining that a "debt does not encumber" real property.
18 Counsel testifying that he served the summons and complaint and
19 that he did not receive a responsive pleading is not substantive
20 evidence supporting the factual merits of the Complaint and Motion.

21 The court declines the opportunity to review the Complaint,
22 distill for the Plaintiff the grounds upon which judgment can be
23 entered for Plaintiff, organize and state such grounds, determine
24 where evidence exists which supports such grounds, present such
25 evidence to the court, rule on such grounds and evidence, and then
26 enter an order on the court's arguments. The court also declines
27 to construct the actual relief which the Plaintiff must be
28 requesting - a determination that an encumbrance on property

1 (apparently a deed of trust) is void and unenforceable following
2 completion of a Chapter 13 Plan and the obligation secured by the
3 deed of trust having been paid in the amount determined by the
4 court pursuant to 11 U.S.C. § 506(a) to be the creditor's secured
5 claim. See *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011),
6 *affd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien striping"
7 in Chapter 13 case).

8 The Plaintiff has also failed to provide any evidence to
9 support entry of the judgment. The only evidence provided is
10 counsel's declaration as to basic procedural pleading requirements.
11 The court declines the invitation to plumb the depths of the
12 documents in this Adversary Proceeding and those in the Plaintiff's
13 Chapter 13 bankruptcy case to present evidence on behalf of the
14 Plaintiff.

15 Merely because a debt was discharged does not necessarily
16 result in a lien being unenforceable. A debt is not an encumbrance
17 on real or personal property, but the lien is an encumbrance. If
18 the court were to grant the relief requested in the Motion, "that
19 the debt shall no longer constitute an encumbrance on [the
20 Plaintiff's] residence...", it is likely that the Plaintiff's
21 property would still be encumbered by the deed of trust.

22 The Plaintiff has not provided the court with a Motion and
23 supporting evidence upon which the requested relief could, or
24 should, be based.

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The court denies the Motion without prejudice. The Plaintiff shall file and serve a noticed motion for entry of default judgment, and all supporting pleadings and evidence, on or before **January 4, 2013**.

Dated: December 13, 2012

/s/
RONALD H. SARGIS, Judge
United States Bankruptcy Court