

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

In Re:
WORLD AIRWAYS LITIGATION

Master
Case No: CV 2004-0304
(RJD) (MDG)

THIS DOCUMENT RELATES TO:
Anyoku, et al., CV 2004-0304 and
Inim, et al., CV 2004-0719

**MEMORANDUM OF LAW IN SUPPORT OF
PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT JUDGMENTS**

Plaintiffs in the above captioned consolidated actions (“Plaintiffs”), by and through lead plaintiffs’ co-counsel Echeruo, Counsel, Attorneys At Law, LLP and Thacher Proffitt & Wood LLP, hereby respectfully submit this memorandum of law in support of its motion pursuant to Fed. R. Civ. P. 55 (b) (2) and Local Civil Rule 55.2 (b) for the entry of default judgments with respect to defendants Ritetime Aviation and Travel Services, Inc. (“Ritetime”) and O. Peter Obafemi (“Obafemi”) in the *Anyoku* action, and with respect to defendant Ritetime in the *Inim* action.

I.

PRELIMINARY STATEMENT

In the above captioned actions, defendants Ritetime and Obafemi have failed to answer or otherwise respond to any of the complaints filed by plaintiffs. Here, default judgment is proper

because plaintiffs' motion is supported by proper documentation and all of the relevant considerations weigh in favor of granting plaintiffs' motion.

II.

STATEMENT OF FACTS

A. *Anyoku, et al. v. World Airways, Inc., et al.*

The basic facts, as set forth in the complaint, are as follows. Ritetime, apparently acting as the agent for World Airways, Inc. ("World"), solicited payments from unsuspecting customers for travel from New York City to Nigeria. Ritetime and/or World then failed to transport plaintiffs from Nigeria back to New York City, stranding plaintiffs for days and weeks. In that time, plaintiffs incurred substantial out of pocket expenses, such as the cost of replacement airfare, consequential damages, such as lost wages and visa problems, and emotional injury.

A copy of the Summons and Complaint in the action captioned *Anyoku, et al. v. World Airways, Inc., et al.* (Case No.: CV 04-0304) was served on defendants Ritetime and Obafemi on January 30, 2004. Declaration of Ike Echeruo, ¶ 2. By stipulation dated February 11, 2004, which was so ordered by the Court on March 11, 2004, Ritetime's and Obafemi's time to answer or otherwise respond was extended to March 19, 2004. Pursuant to this extension, Ritetime and Obafemi agreed "not to assert any affirmative defenses or motions predicated upon the Federal Rules of Civil Procedure, Rule 12(b)(3), 12(b)(4), and 12(b)(5)." *Id.*, at ¶ 3. The Amended Complaint was filed and served by Electronic Case Filing ("ECF") on counsel for Ritetime and Obafemi on February 17, 2004. *Id.*, at ¶ 5. A courtesy copy was sent via Fedex overnight delivery to counsel for Ritetime and Obafemi on February 17, 2004. *Id.* The Second Amended Complaint was filed and served by ECF on counsel for Ritetime and Obafemi on April 2, 2004.

Id., at ¶ 6. To this date, neither Ritetime nor Obafemi have answered or otherwise responded to any of the aforementioned complaints.

B. *Inim, et al. v. World Airways, Inc. et al.*

In the main, the facts in *Inim* differ from the facts in *Anyoku* only because the *Inim* plaintiffs are Nigerians who purchased tickets for travel from Nigeria to the United States, and were either stranded in the United States, or were never flown from Nigeria at all.

A copy of the Summons and Complaint in the action captioned *Inim, et al. v. World Airways, Inc. et al.*, (Case No.: CV 04-0791) was served on Ritetime, through the office of the Secretary of State, on March 26, 2004. *Id.*, at ¶ 4. The Amended Complaint was filed and served by ECF on counsel for Ritetime on April 2, 2004. *Id.*, at ¶ 7. The Second Amended Complaint was filed and served by ECF on counsel for Ritetime on May 20, 2004. *Id.*, at 8. To this date, Ritetime has not answered or otherwise responded to any of the aforementioned complaints.

C. Plaintiffs Are in the Process of Obtaining a Notation of Default

On June 9, 2004, plaintiffs submitted a Request for a Notation of Default to the Clerk of Court for the Eastern District of New York. In the interim, we have been informed that it would take several days to prepare. Plaintiffs await receipt of the Notation of Default.¹

III.

ARGUMENT

Entry of a default judgment is governed by Fed. R. Civ. P. 55 and Local Civil Rule 55.2. In cases where a default judgment is sought against less than all of the parties, an application for

¹ As per telephone conversation with Ms. Janet Hamilton, Default Judgment Clerk for the Eastern District of New York, on June 10, 2004 at 3:45 p.m., plaintiffs' Notation of Default is currently pending, and plaintiffs may move for a default judgment without attaching documentation of same to moving papers.

default judgment should be made to the Court pursuant to Fed. R. Civ. P. 55 (b). *See* Local Civil Rule 55.2 (b).

Entry of default judgment is appropriate when the party against whom judgment is sought was properly served, has failed to plead or otherwise defend the action, and is not an infant, incompetent or in the military. *See* Local Civil Rule 55.1, Fed. R. Civ. P. 55. To obtain a default judgment, the moving party must submit to the Court: (1) a Notation of Default issued by the Clerk of the Court; (2) a copy of the claim to which no response has been made; and (3) a proposed form of default judgment. *See* Local Civil Rule 55.2(b).

In the both the *Anyoku* and *Inim* actions these criteria have been met. In *Anyoku*, Ritetime and Obafemi have been properly served with multiple complaints, and neither has appeared to defend this action. In *Inim*, Ritetime has been properly served with multiple complaints. Neither defendant is an infant or in the military. Furthermore, along with this motion, Plaintiffs will shortly submit to the Court a Notation of Default entered by the Clerk of Court, and have submitted a copy of the Second Amended Complaint in each action and a proposed form of default judgment.

If, as here, the moving party submits or will submit the proper documentation to the court, the court must then determine whether to enter the default judgment. In determining whether to enter a default judgment, a court may consider:

a number of factors that may appear from the record before it. Among these [factors] are...whether material issues of fact...are at issue;...whether the grounds for default are clearly established or are in doubt;...how harsh an effect a default judgment might have; and whether the court thinks it later would be obliged to set aside the default on defendant's motion.

Veronica v. West, 2001 WL 1597804, *3 (E.D.N.Y. Nov. 6, 2001); *see also Federal Home Loan Mortgage Corp. v. 41-50 78th St. Corp.*, 1997 WL 177862, *3 (E.D.N.Y. April 4, 1997); 10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2685, at 423-27 (1983), *Empire Mortgage Ltd. P'ship v. Sullivan*, 1996 WL 599726, *3 (E.D.N.Y. Oct. 15, 1996), *Brome v. Simpkins*, 1987 WL 15632, *1 (E.D.N.Y. Aug. 5, 1997), *McDonnell v. Earthbank Co., Inc.*, 1987 WL 15257, *1 (E.D.N.Y. July 28, 1997).

Each of these considerations weigh in favor of the issuance of default judgments.

First, there are no material issues of fact present here. By repeatedly failing to answer, Ritetime and Obafemi concede that there are no material questions of fact at issue in either action.²

Second, plaintiffs' grounds for default are clearly established. The Clerk of Court will shortly enter a Notation of Default, service of process has been adequately demonstrated, and the defendants have not responded to any of the Complaints.³

Third, there is no reason to believe that a default judgment will have an unduly harsh effect on Ritetime and Obafemi. If either of the defendants believed that they had meritorious defenses to plaintiffs' claims in the Amended Complaints, they would have made such a defense in the nearly half-year of time that has elapsed since service of the Summonses and Complaints.⁴ At this point it appears undisputed that Ritetime, as World's agent, solicited and received

² *Veronica*, 2001 WL at *3. ("there are no material questions of fact at issue because the West Entities, by failing to answer the Amended Complaint, have conceded the allegations therein").

³ *See* attachments to Declaration of Ike Echeruo, Esq; *see also Veronica*, 2001 WL at *3 ("the prerequisites of a default judgment are clearly established--service of process has been adequately demonstrated, the West Entities have not responded to the Amended Complaint, and the Clerk of the Court has entered a default judgment against each of the West Entities").

⁴ *Veronica*, 2001 WL at *3; *see also Federal Home Loan Mortgage Corp.*, 1997 WL at *3 (harsh effects are not present where complaint is never answered).

payments for air travel to and from New York City from plaintiffs, which flights were abruptly and without notice cancelled, leaving plaintiffs' stranded for days on end.

Finally, there is nothing here that indicates that the Court will be required to set aside a default judgment on motion by Ritetime or Obafemi pursuant to Fed. R. Civ. P. 55(c).⁵ Fed. R. Civ. P. 60(b) provides six grounds for relief from a default judgment, only two of which even potentially apply here. But, there has been no mistake, inadvertence, surprise, or excusable neglect such that a default judgment might be set aside under Rule 60(b)(1). And, there are no "extraordinary circumstances" present such that a default judgment might be inappropriate under the "catch-all" provision of Rule 60(b)(6). *See Veronica*, 2001 WL at *4 citing Wright, Miller & Kane, Federal Practice & Procedure § 2695 (3d ed. 1998).

IV.

CONCLUSION

For the reasons stated above, it is respectfully submitted that default judgments should be entered with respect to defendants Ritetime and Obafemi in the *Anyoku* action, and with respect to defendant Ritetime in the *Inim* action.

⁵ In determining whether a default judgment should be set aside pursuant to Fed. R. Civ. P. 55(c), the court looks to the six grounds specified in Fed. R. Civ. P. 60(b): (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence would not have been discovered in time to move for a new trial; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; (6) or any other reason justifying relief from the operation of the judgment. *Veronica*, 2001 WL at *4.

Dated: New York, New York
June 14, 2004

Respectfully Submitted,

ECHERUO, COUNSEL, ATTORNEYS AT LAW, LLP

By: /s/ Ike O. Echeruo
Ike O. Echeruo (IE-5911)

230 Park Avenue, Suite 864
New York, NY 10169
(212) 295 2189

THACHER PROFFITT & WOOD LLP

By: /s/ John P. Doherty
Joel B. Harris (JH-3840)
John P. Doherty (JD-3275)
Brendan E. Zahner (BZ-8645)

Two World Financial Center
New York, NY 10281
(212) 912 7400

Co-Lead Counsel for Plaintiffs