

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In re:)
)
INTERNATIONAL BEAUTY NETWORK, INC.)
)
Debtors.)

Bky. Case No. 00-33612
Chapter 7

)
JOHN A. HEDBACK, TRUSTEE FOR THE)
BANKRUPTCY ESTATE OF INTERNATIONAL)
BEAUTY NETWORK, INC.)

Adv. Pro. No. 02-3204

Plaintiff,)

-against-)

DALORIS LOWENTHAL, THE RICHARD AND)
DALORIS LOWENTHAL FAMILY TRUST,)
GARRY N. LOWENTHAL, EQIULINK LLC,)
OLD OAK FUND, INC., HARBOR VIEW FUND,)
INC., AND HSBC BANK USA, F/K/A)
REPUBLIC NATIONAL BANK OF NEW YORK)

**OPPOSITION OF HSBC BANK USA
TO PLAINTIFF'S APPLICATION
FOR DEFAULT JUDGMENT
AGAINST LOWENTHAL
DEFENDANTS**

Defendants.)

HSBC Bank USA ("HSBC") submits this opposition to the application of John A. Hedback, trustee (the "Trustee"), for default judgment against defendants Daloris Lowenthal, the Richard and Daloris Lowenthal Family Trust, and Garry N. Lowenthal (the "Lowenthal Defendants").

The purpose of the Trustee's application obviously has nothing to do with the Lowenthal Defendants. Instead, the Trustee seeks to obtain some sort of advantage with respect to its claims against HSBC, claims which are the subject of pending cross-motions for summary judgment. The Court should not enter default judgment at this time for at least five reasons.

First, the Trustee has submitted a detailed proposed order that includes proposed findings and conclusions on issues that are potentially relevant with respect to his claims against HSBC. The Trustee clearly intends to argue that this proposed order, if signed, will have preclusive effect and may be used against HSBC.

Second, the case law is clear that a court should not enter a default judgment that could later be inconsistent with a judgment entered between parties actively litigating against each other. *See First TD & Investment, Inc. v. Chang*, 253 F.3d 520, 532 (9th Cir. 2001) (“where a complaint alleges that defendants are jointly liable and one of them defaults, judgment should not be entered against the defaulting defendant until the matter has been adjudicated with regard to all defendants”). It is not at this time clear how a default judgment against the Lowenthal Defendants would or could be inconsistent with a later judgment entered between the Trustee and HSBC, in large part because the Trustee’s motives are not clear. Based on the lack of practical effect to the requested ruling (noted below), and the possibility of inconsistent judgments, the Court should decline to act on the Trustee’s application at this time.

Third, the Lowenthal Defendants have been discharged in bankruptcy from any liability for the claims asserted against them by the Trustee. *See* Bankr. D. Minn. Case No. 0-34405. The Trustee could defend the incurrence of the expense of preparing this application only if it served some purpose, which it clearly does not with respect to the Lowenthal Defendants. Moreover, the lien that would be avoided and preserved for the estate was satisfied in the transaction that is at issue. The only conceivable purpose of this application is to gain an advantage against HSBC.

Fourth, the Trustee has not moved for judgment against defendant Equilink LLC, whose attorney withdrew with court permission almost one year ago. If the Trustee had filed this

application merely as a housekeeping matter, he would also have moved for judgment against Equilink LLC as well.

Finally, it should be noted that the Trustee is attempting to default the Lowenthal Defendants for not responding to the original Complaint filed on September 20, 2002 (erroneously noted in the Trustee's Affidavit of Default as September 20, 2003). The original Complaint was amended, but based on the certificate of service attached to the Amended Complaint, the Lowenthal Defendants do not appear to have been served with it. The Trustee is apparently attempting to default the Lowenthal Defendants for not answering the original Complaint, which is no longer the Trustee's controlling pleading. This should not be permitted.

Given the Lowenthal Defendants' discharge in bankruptcy and, therefore, the lack of any time urgency for a ruling on the Trustee's application, HSBC respectfully requests that the Court defer ruling on the application until the litigation of the claims against HSBC concludes. Alternatively, if the Court decides to enter default judgment against the Lowenthal Defendants immediately, HSBC requests that the order of the Court explicitly state that nothing therein shall have any preclusive effect regarding factual or legal issues relevant to the Trustee's claims against HSBC.

Dated: September 10, 2004

DORSEY & WHITNEY LLP

By: /e/ Todd C. Pearson

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Minneapolis, Minnesota 55402-1498
(612) 340-2600

Attorneys for HSBC Bank USA

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OLD OAK FUND, INC., HARBOR VIEW FUND,)	
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REPUBLIC NATIONAL BANK OF NEW YORK)	
)	
Defendants.		

ORDER

This matter is before the Court on the application of John A. Hedback, trustee (the “Trustee”), for default judgment against defendants Daloris Lowenthal, the Richard and Daloris Lowenthal Family Trust, and Garry N. Lowenthal (the “Lowenthal Defendants”). . Based on all of the files, records and proceedings herein,

IT IS ORDERED that:

The Court will defer consideration of the Trustee’s application for default judgment until final adjudication of the claims against the remaining defendants.

The Trustee's application for default judgment against the Lowenthal Defendants is granted, but this Order shall have no preclusive effect regarding factual or legal issues relevant to the Trustee's claims against the remaining defendants.

HONORABLE GREGORY F. KISHEL
UNITED STATES BANKRUPTCY JUDGE

Date: _____, 2004