

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In re:

Bky. Case No. 00-33612
Chapter 7

International Beauty Network, Inc.,

Debtor.

John A. Hedback, Trustee for the
Bankruptcy Estate of International Beauty
Network, Inc.,

Plaintiff,

v.

Adv. Pro. No. 02-3204

Daloris Lowenthal, The Richard and Daloris
Lowenthal Family Trust, Garry N. Lowenthal,
Equilink LLC, Old Oak Fund, Inc.,
Harbor View Fund, Inc., and HSBC Bank USA,
f/k/a Republic National Bank of New York,

Defendants.

**PLAINTIFF'S REPLY MEMORANDUM IN SUPPORT OF
APPLICATION FOR DEFAULT JUDGMENT**

Defendant HSBC objects to Plaintiff's application for default judgment for lien avoidance against the Lowenthal defendants; significantly, neither the defaulting Lowenthal defendants nor the other defendants have raised any objection. It is true that avoidance and preservation of the Lowenthal liens is a necessary element for the Trustee's conversion claims against HSBC, but HSBC has raised no substantive objection to the Trustee's application for default judgment.

The flaw in HSBC's objection is that it offers no support on the merits to defeat the Trustee's application for default judgment. HSBC does not contest the factual bases for entry of default judgment, and offers no legal justification to deny avoidance of the Lowenthal defendants' liens.

HSBC can hardly claim surprise: the Trustee's January 20, 2004, memorandum in opposition to HSBC's motion for summary judgment set forth in detail (pp. 10-19) the factual and legal bases for the Trustee's lien avoidance claims against the Lowenthal defendants, set forth the legal bases for a conversion claim against HSBC following avoidance and preservation of the liens, and also put HSBC on notice (Memorandum, p. 9) that the Lowenthal defendants were in default and that the Trustee would file an application for default judgment respecting the lien avoidance claims of Counts One and Three.

This is not a situation where the defaulting party may be jointly liable with another defendant, such that determination of the defaulting party's liability should be deferred until trial on the merits against the joint tortfeasor. Instead, the claims against the defendants are separate and distinct: the claims of Count One and Three against the Lowenthal defendants seek avoidance and preservation of preferential insider liens, and Count Five alleges that HSBC's receipt of proceeds subject to the liens renders it liable to the estate for conversion.

Default judgment for lien avoidance will not adjudicate the conversion claims against HSBC; the bank will retain whatever defenses it has to the conversion claims. The issue at hand is whether the Trustee is entitled to default judgment on its claims respecting the Lowenthal defendants, and HSBC has made no factual or legal showing to preclude the requested entry of default judgment.

Plaintiff respectfully requests that the Court grant his application for default judgment.

Dated: October 1, 2004.

KALINA, WILLS, GISVOLD & CLARK, P.L.L.P.

By: /e/ Gordon B. Conn, Jr.
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Certificate of Service

Gordon B. Conn, Jr., under penalty of perjury, states that on the 1st day of October, 2004, he served the Plaintiff's Reply Memorandum in Support of Application for Default Judgment by facsimile and by mail as follows:

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/e/ Gordon B. Conn, Jr.
Gordon B. Conn, Jr.