

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BANK OF COMMERCE & TRUST
COMPANY,

Plaintiff,

McINTOSH COUNTY BANK,

Intervenor,

vs.

Case No. 07-1122-JTM

JOHN-PAUL STRAUSS, a/k/a J.P.
STRAUSS and BANC CORP USA, an
Illinois Corporation, both jointly and
severally,

Defendants.

MEMORANDUM AND ORDER

This matter is before the court on Intervenor Plaintiff McIntosh County Bank's Motion for Default Judgment. (Dkt. No. 30). Plaintiff Bank of Commerce & Trust also has a motion for default judgment pending.

Default in favor of McIntosh will not be entered by the means sought. Under Fed.R.Civ.Pr. 55, there are two ways to a party may obtain default: (a) by the Clerk – if the plaintiff is seeking "a sum certain or for a sum which by computation be made certain" – or (b) to the Court, "in all other cases." McIntosh County Bank seeks a default judgment from the Clerk, both by the express terms

of the Motion itself, as well as the proposed Order submitted to the court.

Default by the Clerk should not be entered. As noted above, entry by the Clerk is warranted only if there is a sum certain. Here, the Intervenor Complaint does contain a reference to missed rental payments, in the amount of \$25,565.61. (Dkt. No. 25, at 19). But the complaint then proceeds to ask for general damages for conversion and fraud “in an amount in excess of \$75,000,” for a constructive trust, and for punitive damages. These are not requests for a sum certain, but are the type of damages which require further investigation, documentation, and proof in the manner set forth in Rule 55(a)(2).

Accordingly, the court will not enter the proposed order, and instead construes the Dkt. No. 30 motion as a Motion for Default to the Court. Pursuant to this construction, McIntosh shall supply any additional proof of its requested damages, such as the plaintiff Bank of Commerce did with its motion, on or before March 31, 2008. Defendants shall submit any response to the motions for default filed by either McIntosh or Bank of Commerce & Trust on or before April 7, 2008.

IT IS SO ORDERED this 24th day of March, 2008.

s/ J. Thomas Marten
J. THOMAS MARTEN, JUDGE