

ENTERED

October 17, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

HOUSTON PRIME INVESTMENTS, LTD,	§	
<i>Plaintiff,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 4:23-CV-0996
	§	
COMMUNITY LOAN SERVICING, LLC,	§	
<i>Defendant.</i>	§	

MEMORANDUM AND RECOMMENDATION

This dispute over Defendant’s efforts to foreclosure on Plaintiff’s mortgage loan is before the Court on Defendant’s Motion to Strike Plaintiff’s Untimely Answer to Counterclaims and Defendant’s Request for Clerk’s Entry of Default and for Default Judgment as to Counterclaims.¹ ECF 14; ECF 15. Defendant filed its Amended Counterclaim on April 7, 2023. ECF 5. Plaintiff filed its Answer on July 26, 2023. ECF 12. On this day, the Court entered an Order granting Plaintiff leave retroactively to file a late Answer and to file an Amended Answer. ECF 31.

Federal Rule of Civil Procedure 55(a) provides that “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown for affidavit or otherwise, the clerk must enter the party’s default.” The requirements of Rule 55(a) are not met here because Plaintiff

¹ The District Court referred this case to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(A) and (B), the Cost and Delay Reduction Plan under the Civil Justice Reform Act, and Federal Rule of Civil Procedure 72. ECF 18.

appeared and filed an Answer *before* Defendant requested entry of default. Moreover, the Court has granted Plaintiff leave to file a late Amended Answer, effectively negating any default. Further, the Fifth Circuit generally disfavors default judgments and prefers that courts resolve disputes on their merits. *Koerner v. CMR Constr. & Roofing, L.L.C.*, 910 F.3d 221, 225 (5th Cir. 2018) (citing *Mason & Hanger-Silas Mason Co. v. Metal Trades Council of Amarillo, Tex. & Vicinity, AFL-CIO*, 726 F.2d 166, 168 (5th Cir. 1984)). For these reasons, the Court RECOMMENDS that Defendant's Motion to Strike Plaintiff's Untimely Answer Counterclaims (ECF 14) and Defendant's Motion for Entry of Default and Motion for Default Judgment (ECF 15) be DENIED.

The Clerk of the Court shall send copies of the memorandum and recommendation to the respective parties, who will then have fourteen days to file written objections, pursuant to 28 U.S.C. § 636(b)(1)(C). Failure to file written objections within the time period provided will bar an aggrieved party from attacking the factual findings and legal conclusions on appeal. *Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1428-29 (5th Cir. 1996) (en banc), superseded by statute on other grounds.

Signed on October 17, 2023, at Houston, Texas.


Christina A. Bryan
United States Magistrate Judge