

STATE OF NORTH CAROLINA
MECKLENBURG COUNTY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
21 CVS 18740

PRESERVATION POINT
DEVELOPMENT, LLC,

Plaintiff,

v.

LAND PARTNERS OF AMERICA,
LLC,

Defendant.

DEFAULT JUDGMENT

1. **THIS MATTER** is before the Court upon Plaintiff Preservation Point Development, LLC's ("Plaintiff" or the "Company") Motion for Entry of Default Judgment (the "Motion"), (ECF No. 11), against Defendant Land Partners of America, LLC ("Defendant") under Rule 55(b)(1) of the North Carolina Rules of Civil Procedure ("Rule(s)") in the above-captioned case. The Court **FINDS** and **CONCLUDES** as follows:

2. Plaintiff initiated this action on 29 November 2021 by filing the Complaint seeking declaratory judgment regarding ownership and management of the Company. (Compl., ECF No. 3.) Defendant was served with the properly issued Summons and a copy of the Complaint on 1 December 2021, as shown by the Affidavit of Service filed with the Court on 4 January 2022. (Aff. of Service ¶ 4, ECF No. 6.)

3. Plaintiff filed a Motion for Entry of Default, (ECF No. 7), on 4 January 2022, and the Court issued an Entry of Default against Defendant that same day, (ECF No. 9).

4. On 25 January 2022, Plaintiff filed the Motion under Rule 55(b) requesting that the Court enter default judgment against Defendant.

5. Defendant has not appeared in the action by either filing an answer or responsive pleading.

6. The Court held a hearing on the Motion on 14 February 2022 at which Plaintiff was represented by counsel.

7. “Under Rule 55, [w]hen default is entered due to a defendant’s failure to answer, the substantive allegations contained in plaintiff’s complaint are no longer in issue, and for the purposes of entry of default and default judgment, are deemed admitted.” *Velleros, Inc. v. Patterson*, 2015 NCBC 15, at *23 (N.C. Super. Ct. Feb. 23, 2015) (alteration in original) (quoting *Luke v. Omega Consulting Grp., LC*, 194 N.C. App. 745, 751 (2009)). The facts that follow are drawn from the Complaint and are deemed admitted for purposes of entering this default judgment.

8. At all relevant times in this matter, Defendant was a Florida limited liability company. (Compl. Ex. A, at 1; Aff. of Service ¶ 3.)

9. Defendant and Preservation Partners LLC (“Preservation Partners”) are each 50% members of the Company, a North Carolina limited liability company created for the purpose of purchasing certain real property in Charlotte, North Carolina (the “Property”). (Compl. ¶¶ 1, 6, 8.)

10. Defendant’s membership interest in the Company is represented by Joseph W. Rhodes (“Rhodes”) and Preservation Partners’ membership interest in the

Company is represented by Jay Kothadia (“Kothadia”). (Compl. ¶ 11.) Both Rhodes and Kothadia are managers of the Company. (Compl. ¶ 11.)

11. The Company is governed by an Operating Agreement (the “Operating Agreement”), which provides that upon purchase of the Property, the Company will enter into a lot purchase agreement with NVR, Inc. (“NVR”). (Compl. ¶¶ 7, 9.)

12. The Company acquired the Property on 18 May 2021, (Compl. ¶ 8), and the lot purchase agreement with NVR was entered into by Defendant rather than the Company, (Compl. ¶ 10).

13. Defendant never assigned the lot purchase agreement with NVR over to the Company. (Compl. ¶ 10.)

14. As members of the Company, Preservation Partners and Defendant agreed that Rhodes would be responsible for the development of the Property. (Compl. ¶ 12.)

15. Rhodes began development work on the Property, but he did not complete the work as Rhodes has disappeared and not been heard from since October 2019. (Compl. ¶ 13.)

16. Rhodes has not acted as manager of the Company, nor has Defendant, either through Rhodes or otherwise. Neither Rhodes nor Defendant has participated in the management of the Company, approved actions related to management of the Company, communicated regarding the Company, or taken any other actions indicating an assertion of rights in the Company since October 2019. (Compl. ¶¶ 17–18.)

17. N.C.G.S. § 57D-3-02(a) provides that “[a] person ceases to be a member upon the occurrence of any of the following events: . . . (4) The person abandoning all of the rights of his ownership interest except his economic interest, or any portion thereof.”

18. Based on the admitted facts set forth above, the Court concludes that Defendant has abandoned its rights of ownership, with the exception of its economic interest, in the Company and therefore is no longer a member of the Company under N.C.G.S. § 57D-3-02(a)(4).

19. “For a default judgment order to be valid, there must be compliance with the procedural requirements set forth in Rule 55 and section 1-75.11 of the North Carolina General Statutes.” *KBT Realty Servs. v. AppyCity, LLC*, 2021 NCBC 47, at *9 (N.C. Super. Ct. Aug. 9, 2021). These requirements mandate that there must be an entry of default, the defendant must not be an infant or incompetent person, there must be proof that the summons has been served, and there must be proof of personal jurisdiction over the defendant by affidavit or other evidence.

20. The Court concludes that these procedural requirements for default judgment have been met. The Court entered default against Defendant on 4 January 2022. Defendant is a limited liability company, not an infant or incompetent person. Defendant was served with the Summons and Complaint in accordance with Rule 4. And the jurisdictional requirements of N.C.G.S. § 1-75.11 are satisfied by the averments contained in the Affidavit of Jay Kothadia, (Aff. of Jay Kothadia ¶ 5), and the admitted allegations of the Complaint, which demonstrate that Defendant is subject to personal jurisdiction in this Court under N.C.G.S. § 1-75.4(5)(a) because

Defendant promised to perform services on real property in North Carolina for the benefit of Plaintiff. *See, e.g., Lemon v. Combs*, 164 N.C. App. 615, 620 (2004) (quoting *Hill v. Hill*, 11 N.C. App. 1, 8 (1971), *writ of cert. denied*, 279 N.C. 348 (1971)) (recognizing that grounds for personal jurisdiction may be established through “an ‘affidavit or other evidence’ [showing] the existence of any fact needed to establish grounds for personal jurisdiction[.]”).

21. N.C.G.S. § 1-253 provides that the Court has the “power to declare the rights, status, and other legal relations” of Defendant with respect to the Company as requested by Plaintiff in the Complaint.

22. **WHEREFORE**, the Court, in the exercise of its discretion, hereby **GRANTS** the Motion, **ENTERS DEFAULT JUDGMENT** on Plaintiff’s declaratory judgment claim in favor of Plaintiff and against Defendant, and hereby **ORDERS** and **DECLARES** as follows:

- a. Defendant has abandoned all of the rights of its ownership interest in the Company, and, by operation of N.C.G.S. § 57D-3-02(a)(4), has therefore ceased to be a member of the Company (except that Defendant retains its economic interest in the Company);
- b. As a result of Defendant’s abandonment and cessation of membership in the Company, Preservation Partners is the sole member of the Company; and
- c. The costs of this action are hereby taxed to Defendant.

SO ORDERED, this the 15th day of February, 2022.

/s/ Louis A. Bledsoe, III

Louis A. Bledsoe, III

Chief Business Court Judge