

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
West Palm Beach Division
www.flsb.uscourts.gov

In re: Case No. 21-15555 -EPK

PALM BEACH RESORT AND BEACH CLUB Chapter 11
CONDOMINIUM ASSOCIATION, INC.,

Debtor-in-Possession.

PALM BEACH RESORT AND BEACH CLUB
CONDOMINIUM ASSOCIATION, INC.,

Plaintiff.

Adv. Pro. No.: 21-01168-EPK

vs.

HPP HOLDINGS, LLC, *et. al.*,

Defendants.

**PLAINTIFF'S EX PARTE MOTION FOR SUSPENSION OF APPLICABILITY OF LOCAL
RULE 7055-1 PROVISION REQUIRING A STATEMENT AFFIRMING A DEFENDANT IS
NOT A MEMBER OF THE MILITARY SERVICE**

The Plaintiff, Palm Beach Resort and Beach Club Condominium Association, Inc., by undersigned counsel, respectfully requests this Court for entry of an Order suspending the applicability of Local Rule 7055-1's provision that requires the movant of a motion for default to attest that a defendant is not a member of the military service¹ (the "Motion")². In support of the Motion, the Plaintiff states as follows:

1. This adversary proceeding was commence by the filing of the Complaint on June 7, 2021 [Adv. ECF # 1].

¹ Contemporaneously with this Motion, the Plaintiff filed a Verified Motion for Default as to Certain Defendants [Adv. ECF # 16].

² Plaintiff is not requesting the suspension of the *entirety* of Local Rule 7055-1; Plaintiff's request is solely as to the provision relating to a statement on the defendant's military non-status, as it relates to the requested default and any future default sought against other defendants in this adversary proceeding.

2. Given the nature of the Plaintiff's business, the amount of defendants named in this adversary proceeding is voluminous. Indeed, the amount of defendants surpasses 1,000.

3. The defendants were served with the Complaint, a copy of the Summons and Notice of Status Conference [Adv. ECF # 2] and a copy of the Order Setting Status Conference and Establishing Procedures and Deadlines [Adv. ECF # 3] either by U.S. Mail or electronic mail, as approved by this court and reflected in the certificate of service filed by undersigned counsel [Adv. ECF # 9].

4. Certain defendants failed to file an answer to the Complaint by the deadline of July 26, 2021, and the Plaintiff now seeks to have a default entered against those Defendants.

5. Entry of a default in a bankruptcy adversary proceeding is governed by Fed. R. Bankr. P. 7055 and Local Rule 7055-1.

6. Local Rule 7055-1 states in relevant part:

Motions for entry of default shall be verified (sworn or affirmed under penalty of perjury) and shall state that the defendant has been properly served with the complaint, that no response has been served on the plaintiff, and that the defendant—if an individual—is not a member of the military service.

7. Given the significant number of defendants (more than 1000 persons and entities) in this adversary proceeding, it is simply not feasible to conduct a search for the military status (or non-status) of every single defendant named in this action. Further, such a search would require the estate to expend considerable resources to complete.

8. The Plaintiff's requested relief does not run contrary to the legislative intent behind Section 201(b) of the Servicemembers Civil Relief Act (SCRA), as the Plaintiff is not seeking to enter a monetary judgment against any defendant, but rather, is seeking declaratory relief from the Court.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on September 26, 2021 to all parties on the list to receive e-mail notice/service for this case, via the Notice of Electronic Filing (which is incorporated herein by reference).

By: _____/s/_____
Ido J. Alexander