Docket #0047 Date Filed: 10/19/2016

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re: TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Debtors.	Chapter 11 Cases 14-40987-MSH 14-40988-MSH 14-40989-MSH Jointly Administered
STEPHEN DARR AS HE IS THE TRUSTEE OF THE CHAPTER 11 ESTATES OF EACH OF THE DEBTORS, Plaintiff, v. LEILA TATIANA XAVIER, CHRIS ARAUJO, JORGE LOPES, ENERSTINA XAVIER, ATANAZIA XAVIER, VLADMIR XAVIER, NERIA XAVIER, JAILSON RAMOS, FRANCISCA XAVIER-DEPINA, SILVIO MIRANDA, AND IVANILDA NASCIMENTO, Defendant(s).	Adversary Proceeding No. 16-04030-MSH

MOTION FOR RECONSIDERATION OF ORDER DENYING THE TRUSTEE'S MOTION FOR ENTRY OF DEFAULT WITHOUT PREJUDICE AS TO JORGE LOPES

Stephen B. Darr, as he is the Trustee (the "Trustee") of the Chapter 11 estates of TelexFree, LLC, TelexFree, Inc., and TelexFree Financial, Inc. (collectively, the "Debtors"), moves, pursuant to Rule 60(a) of the Federal Rules of Civil Procedure, as incorporated herein by Rule 9024 of the Federal Rules of Bankruptcy Procedure, for reconsideration of the Court's order dated October 5, 2016 denying the Trustee's motion for entry of default without prejudice as to defendant Jorge Lopes. In support of this motion, the Trustee states as follows:

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1. On April 1, 2016, the Trustee filed, along with a complaint initiating this adversary proceeding, an *ex parte* motion (the "Notice Motion") for the entry of an order approving the form and manner of providing notice of the complaint and summons upon the above-captioned defendants (the "Defendants").

2. The Notice Motion sought, among other things, the entry of an order authorizing service by electronic mail of the complaint and summons on those Defendants who, based on the Trustee's investigation, reside outside of the state of Massachusetts.

3. On April 16, 2016, the Court entered an order granting the Notice Motion.

4. Service of the complaint and an alias summons issued in this case was effectuated upon Jorge Lopes by electronic mail on April 27, 2016.

5. On September 9, 2016, the Trustee filed a *Motion for Entry of Default* [docket no. 42] (the "Default Motion"), requesting that each of the above-captioned defendants be defaulted for failure to answer or otherwise defend this action. Service of the Default Motion was made upon Jorge Lopes by electronic mail on that same date.

6. On October 5, 2016, the Court entered an order [docket no. 45] (the "Default Order") denying the Default Motion without prejudice as to Jorge Lopes because "the service mailed to him was returned to the Court by the USPS as undeliverable."

7. The Trustee submits that service of the complaint, summons, and Default Motion upon Jorge Lopes by electronic mail was sufficient pursuant to the Court's order granting the Notice Motion.

8. The Default Order also directed the Trustee to "file an affidavit under the Servicemembers Civil Relief Act as to the other defendants against who defaults are sought . . .

." The Trustee has filed such an affidavit with respect to all Defendants, including Jorge Lopes, contemporaneously with the filing of this motion.

9. Accordingly, the Trustee requests that the Court enter an order vacating the Default Order as to Jorge Lopes, granting the Default Motion, and defaulting the Defendants.

10. To the extent the Court deems it necessary, the Trustee requests that the order granting the Notice Motion be extended to include service of the pleadings requesting the default against Jorge Lopes.

WHEREFORE, the Trustee respectfully requests the entry of an order:

a. vacating the Default Order as to Jorge Lopes, granting the Default Motion, and defaulting the Defendants; and

b. granting to the Trustee such other and further relief as is just and proper in the circumstances.

STEPHEN B. DARR,
CHAPTER 11 TRUSTEE,

By his attorneys,

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Dated: October 19, 2016

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