Docket #0121 Date Filed: 6/15/2022

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re: TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Reorganized Debtors.	Chapter 11 Cases 14-40987-EDK 14-40988-EDK 14-40989-EDK Substantively Consolidated
STEPHEN B. DARR AS HE IS THE TRUSTEE OF THE CHAPTER 11 ESTATES OF EACH OF THE DEBTORS, Plaintiff, v. CARLOS WANZELER, et al., Defendants.	Adversary Proceeding No. 16-04032

MOTION BY PLAINTIFF FOR ENTRY OF DEFAULT JUDGMENT (CARLOS COSTA)

The Plaintiff Stephen Darr, Liquidating Trustee ("Trustee") of the substantively consolidated estates of TelexFree LLC, TelexFree Inc., and TelexFree Financial Inc. (collectively, "TelexFree" or the "Debtors") moves pursuant to Federal Rule of Civil Procedure 55(b)(2), as incorporated by Federal Rules of Bankruptcy Procedure ("FRBP") 7055, for entry of default judgment against Defendant Carlos Costa in the principal amount of $3,658,900 plus interest from the date of entry of judgment at the federal judgment rate until satisfied. The Trustee submits the attached Affidavit in support of the motion. The Trustee further states as follows:

1. The Trustee was appointed Chapter 11 Trustee of TelexFree on or about June 6,

2014.

2. The Trustee commenced this adversary proceeding by filing a Complaint on April 1, 2016.

3. The First Amended Liquidating Plan of Reorganization of Stephen B. Darr, Chapter 11 Trustee of TelexFree ("Plan") was confirmed on July 9, 2020. The Plan became effective on July 14, 2020. The Trustee was appointed Liquidating Trustee under the Plan.

4. Carlos Costa was served with the Complaint on April 5, 2017 [docket no. 53].

5. On August 14, 2018, the Court entered default against Carlos Costa for failure to answer or respond [docket no. 61]. The Trustee served the notice of default upon Carlos Costa on August 21, 2018 [docket no. 67].

6. The Trustee now requests that judgment enter by default against Carlos Costa on Count II in the amount of $3,658,900. In further support of the motion, the Trustee has submitted the Affidavit of Stephen Darr attesting to the amount owed by Carlos Costa, attached as Exhibit A hereto.

7. Pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), incorporated by FRBP 7041, the Trustee requests that the remaining counts of the Complaint be dismissed, only as to Carlos Costa.

8. Carlos Costa is not an infant or incompetent person or in the military service of the United States.

WHEREFORE, the Plaintiff respectfully requests that the Court:

1. Enter judgment by default, substantially in the form attached hereto as Exhibit B, as a final judgment in this adversary proceeding on Count II against the Defendant Carlos Costa;
2. Dismiss all counts of the Complaint other than Count II solely as to Carlos Costa; and

3. Grant to the Plaintiff such other and further relief as this Court deems just and proper in the circumstances.

STEPHEN B. DARR,
CHAPTER 11 TRUSTEE
By counsel,

/s/ Andrew G. Lizotte
Andrew G. Lizotte (BBO #559609)
MURPHY & KING, Professional Corporation
28 State Street, Suite 3101
Boston, MA 02109
Tel: (617) 423-0400
Fax: (617) 556-8985
alizotte@murphyking.com

Dated: June 15, 2022
810292

CERTIFICATE OF SERVICE

I, Andrew G. Lizotte, hereby certify that on June 15, 2022, I sent a copy of the foregoing document electronically through the Court's ECF System upon the registered participants as identified on the Notice of Electronic Filing and by first class mail as follows:

Carlos Costa
Avenida Antonio Gil Veloso
2500, Edificio Marlim, Apartamento 801
Itapua 29101-580, Vila Velha, estado do Espirito
Santo, Brazil

/s/ Andrew G. Lizotte
Andrew G. Lizotte

Dated: June 15, 2022

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EXHIBIT A

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re: TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Reorganized Debtors.	Chapter 11 Cases 14-40987-EDK 14-40988-EDK 14-40989-EDK Substantively Consolidated
STEPHEN B. DARR AS HE IS THE TRUSTEE OF THE CHAPTER 11 ESTATES OF EACH OF THE DEBTORS, Plaintiff, v. CARLOS WANZELER, et al., Defendants.	Adversary Proceeding No. 16-04032

AFFIDAVIT OF STEPHEN B. DARR IN SUPPORT OF MOTION FOR DEFAULT JUDGMENT AS TO CARLOS COSTA

I, Stephen B. Darr, being duly sworn, depose and state that:

1. I am the Liquidating Trustee for the substantively consolidated debtors TelexFree LLC, TelexFree Inc., and TelexFree Financial Inc. (collectively, "TelexFree") under the First Amended Liquidating Plan of Reorganization that was confirmed on July 9, 2020 and became effective on July 14, 2020.

2. I am making this affidavit based upon my personal knowledge and the business records of TelexFree.

3. TelexFree filed their Chapter 11 bankruptcy petitions on April 13, 2014.

4. On December 26, 2013, TelexFree paid the sum of $3,658,900 to Carlos Costa.

5. Carlos Costa was not an employee of TelexFree at the time the aforementioned payment was made.

6. The TelexFree records do not reflect a legitimate business purpose for the payment to Carlos Costa.

Attested to this 15th day of June, 2022.

/s/ Stephen B. Darr
Stephen B. Darr
Liquidating Trustee

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS

In re: TELEXFREE, LLC, TELEXFREE, INC. and TELEXFREE FINANCIAL, INC., Reorganized Debtors.	Chapter 11 Cases 14-40987-EDK 14-40988-EDK 14-40989-EDK Substantively Consolidated
STEPHEN B. DARR AS HE IS THE TRUSTEE OF THE CHAPTER 11 ESTATES OF EACH OF THE DEBTORS, Plaintiff, v. CARLOS WANZELER, et al., Defendants.	Adversary Proceeding No. 16-04032

DEFAULT JUDGMENT

Upon consideration of the *Plaintiff's Motion for Entry of Default Judgment against Carlos Costa* (the "Motion"), Carlos Costa having failed to plead or otherwise defend in this action and default having been entered against Carlos Costa, and due cause appearing to me therefore, and due notice of the Motion having been provided, it is hereby ORDERED and ADJUDGED as follows:

1. The Motion is granted.

2. The Plaintiff Trustee has demonstrated that Defendant Carlos Costa owes Plaintiff the sum of $3,658,900, that Defendant Carlos Costa is not an infant or incompetent person or in the military service of the United States.

3. Final Judgment shall be and hereby is entered on this date in favor of Plaintiff Stephen Darr, the Liquidating Trustee of TelexFree, against the Defendant Carlos Costa as follows:

(i) On Count II, in favor of the Trustee against Carlos Costa avoiding the transfers made by TelexFree to Carlos Costa within two years of the petition date in the amount of $3,658,900 as fraudulent transfers, and preserving such transfers for the benefit of the Debtors' estates, pursuant to 11 U.S.C. §548, 550, and 551;

(ii) Judgment in favor of the Plaintiff Trustee against Defendant Carlos Costa in the principal amount of $3,658,900 plus interest from the date hereunder at the federal judgment rate until the Judgment has been satisfied.

Dated: _____, 2022

_____
Honorable Elizabeth D. Katz
United States Bankruptcy Judge