

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 16-80781-CIV-MARRA

JAMES D. SALLAH, not individually, but  
solely in his capacity as Court-Appointed  
Receiver for JCS Enterprises Inc., d/b/a  
JCS Enterprises Services Inc., T.B.T.I. Inc.,  
My Gee Bo, Inc., JOLA Enterprise, Inc.,  
and PSCS Holdings, LLC,

Plaintiff,

v.

DAMON BARNES, individually and  
as Trustee of the C&D Enterprises, Inc. 401k  
and Trustee of the C&D Enterprises, Inc.  
Defined Benefit Plan, and CATHY  
BARNES, individually,

Defendants.

\_\_\_\_\_ /

**DECLARATORY JUDGMENT**

On May 18, 2016, Plaintiff James D. Sallah, not individually, but solely in his capacity as Court-Appointed Receiver for JCS Enterprises Inc., d/b/a JCS Enterprises Services Inc., T.B.T.I. Inc., My Gee Bo, Inc., JOLA Enterprise, Inc., and PSCS Holdings, LLC, filed this action for declaratory relief as to the establishment of an equitable lien for the assets held in Wells Fargo Account No. X-8837 in the name of the C&D Enterprises, Inc. 401k and in Wells Fargo Account No. X-0266 in the name of the C&D Enterprises, Inc. Defined Benefit Plan, against Defendants Damon Barnes, individually and as Trustee of the C&D Enterprises, Inc. 401k and Trustee of the C&D Enterprises, Inc. Defined Benefit Plan, and Cathy Barnes. (DE 1.) On August 23, 2016, Plaintiff filed a Motion for Declaratory Judgment against Defendants pursuant to Rule 57 of the

Federal Rules of Civil Procedure. (DE 11.)

As indicated by the record and Plaintiff's Notice (DE 13), Defendants have failed to respond to Plaintiff's Motion for Declaratory Judgment (DE 11), and the relevant period of time within which to do so has passed. As such, it is within this Court's discretion to grant the motion by default. *See* Local Rule 7.1(c) ("Failure to [serve an opposing memorandum of law no later than fourteen (14) days after service of the motion] may be deemed sufficient cause for granting the motion by default.").

On October 28, 2016, this Court issued an Order to Show Cause, requiring Defendants to show cause, within ten (10) days from the date of the Order, why the Motion for Declaratory Judgment (DE 11) should not be granted. The Court stated that "[f]ailure to comply with this Order shall result in the granting of the Motion by default." Defendants failed to respond to the Court's Order to Show Cause. As such, pursuant to Local Rule 7.1(c), the Court therefore grants Plaintiff's Motion for Declaratory Judgment (DE 11) by default.

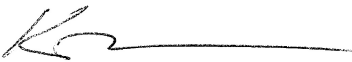
Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Plaintiff's Motion for Declaratory Judgment (DE 11) is **GRANTED**.
2. Declaratory Judgment is hereby entered in favor of Plaintiff James D. Sallah, not individually, but solely in his capacity as Court-Appointed Receiver for JCS Enterprises Inc., d/b/a JCS Enterprises Services Inc., T.B.T.I. Inc., My Gee Bo, Inc., JOLA Enterprise, Inc., and PSCS Holdings, LLC, and against Damon Barnes, individually and as Trustee of the C&D Enterprises, Inc. 401k and Trustee of the C&D Enterprises, Inc. Defined Benefit Plan, and Cathy Barnes, individually, on Count I of the Complaint (DE 1) filed in this action.

3. Plaintiff James D. Sallah, not individually, but solely in his capacity as Court-Appointed Receiver for JCS Enterprises Inc., d/b/a JCS Enterprises Services Inc., T.B.T.I. Inc., My Gee Bo, Inc., JOLA Enterprise, Inc., and PSCS Holdings, LLC is entitled to an equitable lien for the assets held in Wells Fargo Account No. X-8837 in the name of the C&D Enterprises, Inc. 401k and in Wells Fargo Account No. X-0266 in the name of the C&D Enterprises, Inc. Defined Benefit Plan, as the transfers to Defendants were avoidable as fraudulent transfers, based on findings that: (1) Paul L. Schumack, II operated TBTI as a Ponzi scheme; (2) Schumack caused TBTI to transfer \$929,650.00 in connection with a Ponzi scheme, to Defendants; and (3) the transfers Schumack caused TBTI to make to Defendants were made with actual intent to defraud TBTI.

4. The Clerk shall **CLOSE** this case. Any pending motions are **DENIED** as moot.

**DONE AND ORDERED** in Chambers at West Palm Beach, Palm Beach County, this 16<sup>th</sup> day of November, 2016.

  
\_\_\_\_\_  
KENNETH A. MARRA  
United States District Judge