

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13815
Non-Argument Calendar

PABLO DARIO CASTILLO,
an individual,

Plaintiff-Counter Defendant-Appellee,

versus

FERNANDO COLMENARES,
an individual,

Defendant-Counter Claimant-Appellant,

NEW MIAMI HABITAT LLC, et al.,

Counter Defendants.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:21-cv-24221-JAL

Before WILLIAM PRYOR, Chief Judge, and ABUDU and ANDERSON,
Circuit Judges.

PER CURIAM:

Fernando Colmenares appeals *pro se* the default judgment against him and the denial of his motion to amend or alter that judgment. We affirm.

In December 2021, Pablo Castillo, a citizen of Argentina, sued Colmenares, a Florida citizen, for breach of fiduciary duty, conversion, and constructive trust. Castillo alleged that Colmenares purported to be in the real estate business and offered to help him invest in Florida properties. Colmenares convinced Castillo to use a Delaware limited liability company to hold his real estate investments in Florida, as well as other capital contributions, and told Castillo that a domestic resident must be a manager of the company. Colmenares convinced Castillo to designate Colmenares as a member and manager of the company. Castillo believed that he was the sole owner of the company but later discovered that Colmenares had been holding himself out as sole owner and stealing assets from the company.

Colmenares filed an untimely motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c) on the ground that Castillo's complaint failed to allege essential requirements to bring a direct or derivative claim under federal law. Colmenares also moved to dismiss the complaint for failure to satisfy the amount in controversy necessary for jurisdiction based on diversity of citizenship. 28 U.S.C. § 1332. The district court denied both motions, and Colmenares moved for reconsideration under Rule 59(e), which the district court also denied.

After Colmenares failed to appear at a pretrial conference, the district court granted Castillo a default judgment based on Colmenares's "pattern of willful, bad faith, and dilatory behavior throughout this case." It explained that it had authority to impose sanctions on a party that does not appear at a pretrial conference under Rule 16, and that under Rule 37, those sanctions may include the entry of default judgment under Rule 55. It ordered Castillo to file a motion of default judgment stating the factual, evidentiary, and legal bases for his claims. Castillo filed his motion, to which Colmenares responded in opposition, and Castillo later supplemented with affidavits and other documents, including deeds for several real properties. Castillo alleged that Colmenares sold his properties for \$145,000, \$145,000, and \$195,000, and diverted \$113,734.95 in cash with the intent to purchase a fourth property, for a total of \$598,734.95.

The district court granted Castillo's motion in part and denied it in part before Colmenares could respond. It stated that Colmenares had only responded to Castillo's original motion for default judgment but had not responded to his supplement or the rulings on default. It also stated that Colmenares had taken no other action to oppose the default besides filing a "Notice of Apology," which alleged that he missed the pretrial conference because he had car trouble and arrived at the courthouse an hour late. The district court construed that filing as a motion to set aside the default and denied it.

The district court ruled that Castillo alleged sufficient facts to support default judgment on his claims of breach of fiduciary duty, conversion, and constructive trust, and stated it would grant judgment in the amount of \$598,734.95 and “interest on the total amount of the value of the property and the moneys that were diverted to begin on the date of the entry of the [j]udgment” in a separate order. It denied Castillo’s requests for “accrual of pre-judgment interest on the damages,” and “reserve[d] judgment on the costs alleged by [Castillo], predicated on the submission of an affidavit showing” Castillo’s costs. It entered a default judgment to that effect on that day.

Colmenares moved to alter or amend the judgment on the ground that the action should have been a derivative action in which Castillo could not recover personal damages. He also argued that he lacked an opportunity to respond to Castillo’s supplement to his motion for default judgment. He requested that the district court “[c]orrect the clear error of law regarding [Castillo’s] lack of standing,” “[r]emedy the procedural unfairness caused by the [district c]ourt’s failure to permit a response to [Castillo’s] supplemental motion,” and “[d]ismiss all claims asserted by [Castillo] in his individual capacity that are derivative of harm to Cash Investments LLC.”

The district court denied Colmenares’s motion. It ruled that Castillo alleged personal harm and stated that Colmenares made the same argument in his motion for judgment on the pleadings

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and his later motion for reconsideration. It also ruled that Colmenares was not entitled to respond to the supplement but that he was able to respond to the motion for default judgment. It described Colmenares's motion as the "most recent chapter in [Colmenares's] dilatory, bad faith conduct that he has maintained throughout this case."

Colmenares maintains that he does not seek to set aside the default as to liability but seeks instead to challenge the damages award on the grounds that Castillo cannot recover damages for company losses and that the district court should have held a damages hearing. He also argues that his due process rights were violated when the district court denied him an opportunity to respond to Castillo's supplemental motion.

The district court did not err. Under Florida law, Castillo could recover damages in a direct suit. Florida law provides that a member of a limited liability company may sue in his individual capacity, instead of in a derivative action, if he can satisfy a two-part test: he must allege "a direct harm to the shareholder or member such that the alleged injury does not flow subsequently from an initial harm to the company" and "a special injury to the shareholder or member that is separate and distinct from those sustained by the other shareholders or members." *Freedman v. magicJack Vocaltec Ltd.*, 963 F.3d 1125, 1136 (11th Cir. 2020). A direct harm does not occur when "the alleged wrongdoing flows first to the company and only damages the shareholders or members due to the

loss in value of their respective ownership interest in the company.” *Strazzulla v. Riverside Banking Co.*, 175 So. 3d 879, 883 (Fla. Dist. Ct. App. 2015). Castillo experienced a harm that did not “flow subsequently from an initial harm to the company.” *Freedman*, 963 F.3d at 1136. Colmenares induced him to place his properties and capital into a limited liability company based on the assurance that he would remain the sole owner of the properties and capital, which Colmenares later misappropriated.

We review the decision whether to hold an evidentiary hearing on damages for abuse of discretion. See *Anheuser-Busch, Inc. v. Philpot*, 317 F.3d 1264, 1266 (11th Cir. 2003); *Kerrivan v. R.J. Reynolds Tobacco Co.*, 953 F.3d 1196, 1204 (11th Cir. 2020). The district court “has an obligation to assure that there is a legitimate basis for any damage award it enters, and to assure that damages are not award solely” as the result of one party’s failure to respond and are not “unreasonable or speculative . . . with no factual basis.” *Anheuser-Busch, Inc.*, 317 F.3d at 1266. “Damages may be awarded only if the record adequately reflects the basis for award via a hearing or a demonstration by detailed affidavits establishing the necessary facts.” *Adolph Coors Co. v. Movement Against Racism & the Klan*, 777 F.2d 1538, 1544 (11th Cir. 1985) (quotation marks omitted).

Under Rule 55(b), following the entry of default judgment, a district court *may* conduct an evidentiary hearing “when, to enter or effectuate judgment, it needs to . . . determine the amount of damages.” Fed. R. Civ. P. 55(b)(2)(B). “Given its permissive language, Rule 55(b)(2) does not require a damages hearing in every

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case.” *Giovanno*, 804 F.3d at 1366. “The district court may forego a hearing where all essential evidence is already of record.” *Id.* (quotation marks omitted). When a defendant defaults, he “admits the plaintiff’s well-pleaded allegations of fact.” *Lary v. Trinity Physician Fin. & Ins. Servs.*, 780 F.3d 1101, 1106 (11th Cir.2015) (quotation marks omitted).

The district court did not abuse its discretion in not holding a hearing or in its damages award. *See Adolph Coors Co.*, 777 F.2d at 1544. Castillo alleged that he lost investments totaling \$598,734.95 in cash and real property as a result of Colmenares’s deception, and by his default, Colmenares admitted that allegation. *See Lary*, 780 F.3d at 1106. Colmenares also enjoyed an opportunity to be heard when he filed his motion to alter or amend the judgment, so his due process rights were also not violated. *See Am C.L. Union of Fla., Inc. v. Miami-Dade Cnty. Sch. Bd.*, 557 F.3d 1177, 1229 (11th Cir. 2009).

We AFFIRM.