

**United States District Court**  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

SECURITIES AND EXCHANGE  
COMMISSION

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§

V.

CASE NO. 4:13-CV-416  
Judge Clark/Judge Mazzant

TRENDON T. SHAVERS and BITCOIN  
SAVINGS AND TRUST

**ORDER DENYING PLAINTIFF'S EMERGENCY MOTION TO STRIKE OR, IN THE  
ALTERNATIVE, FOR STAY**

Pending before the Court is Plaintiff's Emergency Motion to Strike or, In the Alternative, for Stay (Dkt. #49). In its motion, the SEC requests that the Court strike Defendants' Motion for Reconsideration of Court Opinion Regarding Subject-Matter Jurisdiction and Renewed Rule 12(b)(1) Motion (Dkt. #46), or, in the alternative, stay the SEC's deadline to respond thereto. The SEC notes that Defendants' failed to answer or otherwise respond to the SEC's Complaint by their August 13, 2013 deadline. On August 22, 2013, the SEC requested entry of default against Defendants, and the Court entered default against Defendants on that same day. It was not until June 3, 2014, that Defendants moved this Court to set aside the defaults. That motion is currently pending. The SEC argues that the Defendants are in default, and the entry of default against a defendant cuts off the defendant's right to appear in the case with respect to liability issues (Dkt. #49 at 2 (citing *Greyhound Exhibitgroup, Inc. v. E.L.U.L. Rlty. Corp.*, 973 F.2d 155, 160 (2d Cir. 1992); *Taylor v. City of Balwin*, 859 F.2d 1330, 1333 n.7 (8th Cir. 1988); *Caribbean Produce Exch. v. Caribe Exch. v. Caribe Hydro-Trailer, Inc.*, 65 F.R.D. 46, 48 (D.P.R. 1974))).

However, Defendants' motion is a 12(b)(1) motion, which challenges the Court's subject matter jurisdiction. Defendants' motion does not address liability issues or the factual allegations in the case, but raises jurisdictional issues. The Court agrees with Defendants that the

Court's subject matter jurisdiction is always relevant, and the party asserting jurisdiction has the burden to prove that jurisdiction exists. *See Ramming v. United States*, 281 F.3d 158, 161 (5th Cir. 2001).

For the foregoing reasons, the Court finds that Plaintiff's Emergency Motion to Strike or, In the Alternative, for Stay (Dkt. #49) is **DENIED**.

**IT IS SO ORDERED.**

**SIGNED this 9th day of June, 2014.**

  
AMOS L. MAZZANT  
UNITED STATES MAGISTRATE JUDGE