

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF ALABAMA

In Re:

DENNISON W. KIRKLAND, III

Case No. 18-00125

Debtor.

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DENNISON W. KIRKLAND, III,

Plaintiff,

v.

Adversary Case No. 18-00016

CHECK N GO,

Defendant.

ORDER VACATING CLERK'S ENTRY OF DEFAULT, DENYING MOTION FOR  
DEFAULT JUDGMENT, AND RESETTING SCHEDULING CONFERENCE

This matter is before the court on the motion for default judgment filed by the plaintiff (doc. 8). The plaintiff filed this action on March 20, 2018. The defendant did not file a timely answer, and the plaintiff requested that the clerk enter a default against the defendant, which the clerk did on June 4, 2018 (*see* doc. 7). The plaintiff subsequently moved for default judgment (*see* doc. 8).

Federal Rule of Civil Procedure 55 applies in adversary proceedings pursuant to Federal Rule of Bankruptcy Procedure 7055. “Before entry of default under Rule 55(a) or entry of judgment under Rule 55(b), [the court] must be certain that in has . . . jurisdiction[; p]roof of service of process is a precursor to such.” *See Branch Banking & Trust Co. v. Imagine CBQ, LLC*, No. 11-0168-KD-C, 2012 WL 12904368, at \*2 (S.D. Ala. Jan. 19, 2012). “Typically, insufficient service of process on a party operates to prohibit a court from entering a default

judgment against that party.” *Rismed Oncology Sys., Inc. v. Baron*, 638 F. App’x 800, 805-06 (11th Cir. 2015).

Federal Rule of Bankruptcy Procedure 7004 governs service of process in adversary proceedings, including service of process on a business entity such as the defendant here. Rule 7004(b)(3) allows service within the U.S. by first class mail on a corporation, partnership, or unincorporated association, but the summons and complaint cannot simply be mailed to the business; they must be sent “to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process . . . .” Bankruptcy Rule 7004 also incorporates Federal Rule of Civil Procedure 4(h)(1)(A), which allows service by certified mail on a business entity through compliance with Alabama Rule of Civil Procedure 4(c)(6).<sup>1</sup> However, like the bankruptcy rule, the Alabama rule requires that the certified mailing cannot be just mailed to the business but must be addressed to “an officer, a partner (other than a limited partner), a managing or general agent, or any agent authorized by appointment or by law to receive service of process.”

The record shows only that the plaintiff sent the summons and complaint to “Check N Go” by certified mail at an address in Alabama. (*See* doc. 5). The complaint was not addressed to any particular person and the record does not reflect who received it. The record does not reflect what type of entity this defendant is or whether it is the same as “Check’n Go of Alabama, Inc.,” a foreign corporation listed on the Alabama Secretary of State’s website with CT Corporation System as its registered agent. In any event, it is clear that there is insufficient service of process and thus this court cannot enter a default judgment.

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<sup>1</sup> Rule 4(h) provides other avenues of service, but the court only discusses mailing here, as that is the type of service attempted by the plaintiff in this action.

Accordingly, the court hereby vacates the clerk's entry of default (doc. 7) and denies the plaintiff's motion for default judgment (doc. 8). The scheduling conference currently set for June 19, 2018 is cancelled and reset for Tuesday, July 24, 2018 at 9:00 a.m. at the U.S. Bankruptcy Court for the Southern District of Alabama, Courtroom 2, 201 St. Louis Street, Mobile, Alabama 36602. The court expects the plaintiff to have amended his complaint to properly name the defendant and to have served the defendant by that time. The court also reminds plaintiff of Federal Rule of Bankruptcy Procedure 7004(e)'s time limit for service (seven days after issuance of the summons).

Dated: June 15, 2018

  
HENRY A. CALLAWAY  
CHIEF U.S. BANKRUPTCY JUDGE