

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

IN RE: CASE NO. 02-12068)
)
CHARLES M. HANNEMAN)
)
Debtor)
)
)
CHARLES M. HANNEMAN)
)
Plaintiff)
)
vs.) PROC. NO. 07-1207
)
KEY BANK, N.A.)
)
Defendant)

DECISION AND ORDER

At Fort Wayne, Indiana, on February 12, 2008.

The plaintiff in this adversary proceeding, who is proceeding pro se, is seeking relief and/or damages for what seems to be a claim that the defendant has violated the discharge injunction. The plaintiff has filed a motion for summary judgment – which is really a motion for a default judgment since no facts are offered beyond the defendant’s failure to answer. Compare, Fed. R. Civ. P. Rule 55 with Fed. R. Civ. P. Rule 56. It is this motion which is presently before the court.

The plaintiff filed an earlier motion for summary judgment which was denied due to the lack of proof of service. At that point, the court had before it no return at all which would demonstrate service of the summons and complaint. Following denial of that motion, an alias summons was issued and the plaintiff has filed a certificate of service of the summons and the complaint demonstrating that the summons and complaint were served upon Key Bank N.A., Feiwell & Hannoy P.C., 251 N. Illinois #1700, Indianapolis, Indiana 46204 via first-class mail on November

17, 2007.

The service of a summons is the procedure by which a court asserts personal jurisdiction over the party being sued. See, Silva v. City of Madison, 69 F.3d 1368, 1376 (7th Cir. 1995). Consequently, where service of the summons is defective, the court lacks personal jurisdiction over the defendant and any default judgment entered under such circumstances is necessarily void. See, In re Campbell, 105 B.R. 19, 21 (9th Cir. BAP 1989); In re Cappuccilli, 193 B.R. 483, 488 (Bankr. N.D. Ill. 1996).

In the instant case the court finds plaintiff's service deficient. To begin with, the certificate of service of the summons and complaint has been signed by the pro se plaintiff. That is not permitted. Service of the summons and complaint cannot be made by one who is a party to the proceeding. Fed. R. Civ. P. Rule 4(c)(2); Fed. R. Bankr. P. Rule 7004(a)(2). Furthermore, service was not made by certified mail, has not been directed to a particular officer, and may not even have been directed to the bank's agent.¹ Fed. R. Bankr. P. Rule 7004(h) (specifying the requirements of service on insured depository institutions).

Under these circumstances, the court is without power to enter a default, or any judgment, against the defendant. Accordingly, plaintiff's motion is denied.

SO ORDERED.

/s/ Robert E. Grant
Judge, United States Bankruptcy Court

¹The court has nothing before it which indicates that Feiwell & Hannoy is the registered agent in Indiana for receiving service of process on behalf of Key Bank. See, Fed. R. Civ. P. Rule 4(h). Neither has Feiwell & Hannoy filed an appearance in this case on behalf of Key Bank. Fed. R. Bankr. P. Rule 7004(h)(1).