

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
JON A. ZIMA and)	CASE NO. 08-30978 HCD
DEANNA ZIMA,)	CHAPTER 7
)	
DEBTORS.)	
)	
)	
REBECCA HOYT FISCHER, TRUSTEE,)	
)	
PLAINTIFF,)	
vs.)	PROC. NO. 08-3071
)	
JON A. ZIMA and)	
DEANNA ZIMA,)	
)	
DEFENDANTS.)	

ORDER

At South Bend, Indiana, on January 13, 2009.

Before the court is the Motion for Default Judgment filed by the plaintiff Rebecca Hoyt Fischer, Chapter 7 Trustee, against the defendants Jon A. Zima and Deanna Zima, chapter 7 debtors. The plaintiff stated, in the Motion and attached Affidavit, that the defendants failed to answer or otherwise plead to the “Complaint for the Denial of Debtor’s [sic] Discharge” in this action filed on August 11, 2008. She asks that the court enter default judgment against the defendants.

The court finds that the plaintiff has complied with the requirements of Rule 55 of the Federal Rules of Civil Procedure, as incorporated into bankruptcy adversary proceedings by Rule 7055 of the Federal Rules of Bankruptcy Procedure, the rules governing defaults. First, she commenced the adversary proceeding by filing a Complaint and serving the defendants and their bankruptcy counsel pursuant to Rule 7004(b)(9) of the Federal Rules of Bankruptcy Procedure. When the defendants did not timely answer the Complaint, the Trustee filed an “Affidavit of No Answer, Defense or Response,” verifying that the defendants were properly served with the Complaint, summons and notice of service; that they did not respond; and that the time for response had passed.

The court finds that the Trustee's service to the defendants at the address listed on their chapter 7 petition was appropriate service of process under Rule 7004(b). It further notes that the defendants have not designated another address in a filed writing, *see* Rule 4002(5). Because the plaintiff showed, by affidavit, her proper actions and the defendants' failure to respond, the Clerk of the Court entered a default against the defendants on October 10, 2008. *See* Fed. R. Civ. P. 55(a); Fed. R. Bankr. P. 7055.

The plaintiff now requests that the court enter a judgment by default, in accordance with Rule 55(b). She has attached an Affidavit of Non-Military Status, stating facts demonstrating that each defendant is not in military service, in compliance with the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.App. § 501 et seq. *See Toyota Motor Credit Corp. v. Montano (In re Montano)*, 192 B.R. 843, 845 (Bankr. D. Md. 1996). Having received the motion and affidavit, the court examined the Trustee's Complaint to determine whether its allegations were well-pled and were sufficient to state a legitimate claim for relief. *See In re Taylor*, 289 B.R. 379, 382 (Bankr. N.D. Ind. 2003). Bankruptcy courts in this circuit require the plaintiff to prove a *prima facie* case under the pertinent section of the Bankruptcy Code before a default judgment is granted. *See DuBois v. Faber (In re Faber)*, 330 B.R. 235, 239 (Bankr. N.D. Ind. 2005); *Capital One Bank v. Bungert (In re Bungert)*, 315 B.R. 735, 736-37 (Bankr. E.D. Wis. 2004); *New Austin Roosevelt Currency Exchange, Inc. v. Sanchez (In re Sanchez)*, 277 B.R. 904, 907 (Bankr. N.D. Ill. 2002)). The court's entry of a judgment by default is discretionary. It is appropriate only after the court determines that service was properly made, that the party has defaulted, and that the complaint's allegations support the relief sought. *See Levin v. Greco (In re Greco)*, 397 B.R. 102, 105 (Bankr. N.D. Ill. 2008); *El-Yacoubi v. Hetrick (In re Hetrick)*, 379 B.R. 612, 618-19 (Bankr. E.D. Va. 2007).

In this case, the Complaint sought denial of discharge pursuant to 11 U.S.C. § 727(a)(5). Pursuant to that section, the court must grant the debtor a discharge unless "the debtor has failed to explain satisfactorily . . . any loss of assets or deficiency of assets to meet the debtor's liabilities." The Trustee's Complaint described the defendants' non-exempt assets (a 2008 economic stimulus check, a preferential transfer, and security deposit) and her attempts to recover those items as property of the estate. She stated that the court granted her Motion to

