

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
SOUTH BEND DIVISION

IN THE MATTER OF	)	
	)	
DANIEL STEVEN COAPSTICK and	)	CASE NO. 12-31404 HCD
DEJON MARIE COAPSTICK,	)	CHAPTER 7
	)	
DEBTORS.	)	
	)	
INDIANA DEPARTMENT OF WORKFORCE	)	
DEVELOPMENT,	)	
PLAINTIFF,	)	
vs.	)	PROC. NO. 12-3048
	)	
DANIEL STEVEN COAPSTICK,	)	
DEFENDANT.	)	

Appearances:

LeGrand L. Clark, Esq., Deputy Attorney General, Office of the Attorney General, Indiana Government Center South, Fifth Floor, 302 West Washington Street, Indianapolis, Indiana 46204.

MEMORANDUM OF DECISION

At South Bend, Indiana, on December 12, 2012.

Before the court is the Motion for Default Judgment filed by the Indiana Department of Workforce Development (“plaintiff” or “IDWD”) against chapter 7 debtor Daniel Steven Coapstick (“defendant” or “debtor”). The plaintiff seeks a judgment by default on the ground that the defendant failed to answer or otherwise plead to the Complaint to Determine Dischargeability of Debt. The plaintiff asks the court to enter judgment by default in its favor and to declare the debt owed to it by the defendant nondischargeable pursuant to 11 U.S.C. § 523(a)(2)(A) and (a)(7). For the reasons presented below, the court grants the plaintiff’s Motion for Default Judgment.<sup>1</sup>

BACKGROUND

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<sup>1</sup> The court has jurisdiction to decide the matter before it pursuant to 28 U.S.C. § 1334 and § 157 and the Northern District of Indiana Local Rule 200.1. The court has determined that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(I).

The debtors Daniel Steven and Dejon Marie Coapstick, represented by Doug A. Bernacchi, Esq., filed a voluntary chapter 7 petition on April 20, 2012. On Schedule E, they listed IDWD as a creditor holding an unsecured priority claim in the amount of \$5,550.00. On Schedule J, the debtors stated that they were paying \$325.00 a month to IDWD. After the chapter 7 Trustee held the § 341 meeting of creditors, he filed his Report stating that there was no property available for distribution from the debtors' bankruptcy estate to creditors. The debtors received their Order of Discharge on August 6, 2012; the Order stated, however, that not all types of debts are discharged in a chapter 7 case.

The IDWD timely filed this adversary proceeding, alleging in its Complaint that the defendant Daniel Steven Coapstick failed to disclose material facts which would have made him disqualified or ineligible to receive unemployment insurance benefits or eligible to receive benefits in a reduced amount. Under Count I of the Complaint, the plaintiff listed specific weeks between December 13, 2008, and December 5, 2009, in which the defendant was employed and yet received unemployment insurance benefits. Under Count II, the plaintiff listed the weeks between December 19, 2009, and September 11, 2010, in which the defendant's conduct was repeated. It claimed that the debt, obtained by false pretenses, false representation, or actual fraud, should be declared nondischargeable as a debt for money fraudulently obtained, pursuant to 11 U.S.C. § 523(a)(2)(A), and as a civil penalty payable to and for the benefit of a governmental unit under § 523(a)(7). It requested that the debt of \$281.25 plus costs (under Count I) and \$4,190.00 plus costs (under Count II) be excepted from the defendant's discharge.

The plaintiff's Certificate of Service declared that the plaintiff served the summons and a copy of the Complaint on the defendant and his bankruptcy attorney by certified mail on the day after the Complaint was filed with the court. *See* R. 4. Once the time for answering the Complaint had passed, the plaintiff filed a Motion for Entry of Default. Based on the Motion, the Clerk of the Court entered a default against the defendant.

Thereafter, the plaintiff filed its Motion for Default Judgment. It demonstrated the defendant's default and set forth the uncontested facts showing that its debt should be excepted from the defendant's discharge under § 523(a)(2)(A) and § 523(a)(7). The exhibits attached to the Motion confirmed the facts presented in the Motion. In addition, the Motion was supported by two affidavits: the Affidavit for Default Judgment of plaintiff's counsel, affirming that the defendant was not an infant, an incompetent person, or a military serviceman; and the Affidavit of Indebtedness, filed by a Collection Specialist who kept the records of the IDWD and affirmed that the defendant's debt to the IDWD was \$4,471.25. The plaintiff then moved for a judgment by default.

### DISCUSSION

Rule 7055 of the Federal Rules of Bankruptcy Procedure governs defaults. It applies Rule 55 of the Federal Rules of Civil Procedure in adversary proceedings such as this one. Rule 55 distinguishes between an "entry of default" and "judgment by default." *See Lowe v. McGraw-Hill Cos., Inc.*, 361 F.3d 335, 339 (7th Cir. 2004). It sets forth a two-step process for a movant: proof of a default and then justification for a judgment by default. *See In re Catt*, 368 F.3d 789, 793 (7th Cir. 2004).

An entry of default is made by the Clerk of the Court when two acts occur: (1) the defendant "has failed to plead or otherwise defend," and (2) "that failure is shown by affidavit or otherwise." Fed. R. Civ. P. 55(a). To satisfy Rule 55(a), the plaintiff first must submit a sworn statement that verifies (a) that the defendant was served properly (pursuant to Bankruptcy Rule 7004) with the summons and complaint; (b) that the defendant did not answer, defend, or respond to the complaint; and (c) that the time for a response had expired. When the request is filed with an affidavit, the Clerk of the Court enters the party's default. In this case, the plaintiff filed a Motion for Entry of Default, but without an attached affidavit. Nevertheless, the Clerk of the Court entered the default. *See R. 6.*

The Clerk's Entry of Default under Rule 55(a) must precede the request for a granting of a default judgment under Rule 55(b). See *In re Catt*, 368 F.3d at 793 (“Once the default is established, and thus liability, the plaintiff still must establish his entitlement to the relief he seeks.”). The plaintiff herein applied to the court for a default judgment under Rule 55(b)(2). Because the defendant was a natural person, the default judgment motion required a supporting affidavit that verified the defendant's status as not an infant, an incompetent person, or one holding military status. The affidavit needed to present facts that complied with the Soldiers' and Sailors' Civil Relief Act, 50 U.S.C.App., § 501 *et seq.* See *United States v. Kaufman*, 453 F.2d 306, 308-09 (2nd Cir.1971); *Target Nat'l Bank v. Redmond (In re Redmond)*, 399 B.R. 628, 632 (Bankr. N.D. Ind. 2008). The motion was required, as well, to demonstrate that the allegations of the underlying complaint proved a *prima facie* case for a valid cause of action and established the defendant's liability as a matter of law. See *In re Redmond*, 399 B.R. at 633; see also *Capital One Bank v. Bungert (In re Bungert)*, 315 B.R. 735, 736-37 (Bankr. E.D. Wis. 2004); *In re Taylor*, 289 B.R. 379, 382 (Bankr. N.D. Ind. 2003).

The court's entry of a judgment by default is discretionary. See *Sun v. Board of Trustees of Univ. of Ill.*, 473 F.3d 799, 810 (7th Cir.), *cert. denied*, 551 U.S. 1114, 127 S. Ct. 2941, 168 L.Ed.2d 262 (2007). It may be denied when the facts are insufficient to support the claim in the complaint. Particularly in a bankruptcy setting, in which “a debtor has a presumptive right to a discharge, default judgment motions should not be granted unless the movant shows that its debt is nondischargeable as a matter of law.” *In re Zecevic*, 344 B.R. 572, 576 (Bankr. N.D. Ill. 2006) (citations omitted). After the court accepts all the factual allegations of the complaint as true and admitted by the defendant, and after it draws all reasonable inferences in its favor, it still must determine whether the complaint's allegations “state a legitimate claim for relief.” *In re Taylor*, 289 B.R. at 382. “A default judgment establishes, as a matter of law, that defendants are liable to plaintiff on each cause of action alleged in the complaint.” *e360 Insight v. The*

*Spamhaus Project*, 500 F.3d 594, 602 (7th Cir. 2007) (adding that a hearing must be held on damages unless the claim is liquidated or clearly calculable).

In this case, the court finds that the plaintiff properly began fulfilling the requirements of Rule 55(a): It timely served the debtor and his attorney of record, in compliance with Federal Rule of Bankruptcy Procedure 7004(b)(9), (g) and (e); it then submitted to the court its Certificate of Service of Summons. The Certificate of Service was not completed properly; however, the plaintiff had attached the receipts from the mail tracking company “ConfirmDelivery,” which listed the addresses of service and confirmed that delivery had been made. The receipts reported delivery by first class certified mail, with electronic return receipts, and it provided the dates of mailing, notices, and delivery. The court finds that the mail tracking service’s electronic receipts are an acceptable and sufficient method of corroborating proof of service. *See* N.D. Ind. L.B.R. B-9013-4; Ind. Trial Proc. Rule 4.11. They do not, however, substitute for a properly completed and filed Certificate of Service.<sup>2</sup> *See* Fed. R. Civ. P. 4(l) (requiring proof of service made to the court by the server’s affidavit); *see also In re Flaherty*, 432 B.R. 742, 751 (Bankr. N.D. Ill. 2010) (stating that “the Plaintiff’s certificate of service and affidavit constitute prima facie evidence of proper service”).

The plaintiff’s Motion for Entry of Default stated, in cursory fashion, that the Complaint was filed with the court and served on the defendant and his attorney by certified mail; that the defendant did not respond; and that, to the best of the plaintiff’s knowledge the defendant was not an infant, incompetent person, or military person. However, courts commonly hold that any statements pronounced by a plaintiff or affiant without substantiation, made merely to the “best of its knowledge,” are insufficient. *See Indiana Department of Workforce Development v. Poe*, Case No. 12-30526, Adv. Proc. 12-3033, Mem. Dec. of Dec.

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<sup>2</sup> The plaintiff failed to fill in the complete names and addresses of the persons served, information which is required by the Certificate of Service. Although the court was able, in this case, to retrieve that information from the ConfirmDelivery.com attachment, the Certificate of Service itself is a verified statement that service was made upon the specified parties at the specified proper addresses. Future incomplete Certificates of Service will not be accepted by the court.

11, 2012, at 3 (citing *Medical Assurance Co., Inc. v. Hellman*, 610 F.3d 371, 376 (7th Cir. 2010), and *America's Best Inns, Inc. v. Best Inns of Abilene, L.P.*, 980 F.2d 1072, 1074 (7th Cir. 1992) (per curiam)).

Moreover, a Rule 55(a) motion requesting an entry of default standardly is supported by a separate affidavit or sworn statement which affirmatively demonstrates the elements required under Rule 55(a) – the plaintiff's proper service, the defendant's failure to answer, and expiration of the time for response. *See, e.g., In re Lewis*, 2010 WL 2773320 at \*2 (N.D. Ala. July 13, 2010) (describing application with separate affidavit which complied with Rule 55(a)); *cf. Greene v. U.S. Dep't of Educ.*, 2008 WL 859215 at \*20, n.5 (N.D. Ind. Mar. 27, 2008) (reviewing Rule 56(e) affidavit, making clear that an affidavit must not include "(1) conclusory allegations lacking supporting evidence; (2) legal argument; (3) self-serving statements without factual support in the record; [(4)] inferences or opinions not 'grounded in observation or other first-hand experience;' and (5) mere speculation or conjecture"). The plaintiff, having attached two properly made affidavits to its Rule 55(b) Motion for Default Judgment, is well aware of the usual method for filing separate affidavits, and clearly knows that a proper affidavit establishes the affiant's qualification as a person with first-hand knowledge who is competent to attest to the truth of the statements and to swear to the validity of the matter under penalty of perjury.<sup>3</sup> However, the plaintiff's Motion for Entry of Default included the language of affidavits, as if it were a "verified motion." Plaintiff's counsel, as affiant, declared under penalty of perjury that the statements in the Motion were true, and he signed the document in affirmation and verification of those statements. The court therefore deems that plaintiff's counsel converted the factual assertions in the Motion into an Affidavit. Accordingly, the court determines that the "verified" Motion for Entry of Default met the requirements of Rule 55(a).

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<sup>3</sup> The court notes that the Affidavit for Default Judgment, filed by plaintiff's attorney, affirms that he is competent to testify to the matters in the Affidavit. *See* R. 8, Ex. A. It then states that the defendant is neither an infant nor an incompetent, and that he is not an active service member, as the affiant confirmed through the Department of Defense Manpower Data Center. *See id.* This document thus properly confirms that a judgment of default is not being entered against a member of the armed services who is unable to appear and defend himself in court. It therefore fulfills the affidavit requirement of Rule 55(b). *See In re Redmond*, 399 B.R. at 632 (citing cases).

Turning to the plaintiff's Motion for Default Judgment, the court finds that the plaintiff provided comprehensive factual allegations, supported by evidentiary and affidavit attachments, that are sufficient to support the Complaint's claims. It proved a *prima facie* case of the allegations in the Complaint, thereby fulfilling the requirements of Rule 55(b). The court concludes that the plaintiff has established, as a matter of law, that the defendant is liable to the plaintiff on each cause of action alleged in the Complaint. In addition, it determines that the amount claimed by the plaintiff was a sum certain, specifically ascertained in the detailed Affidavit of Indebtedness. *See* R. 8, Ex. B. Accordingly, the court grants the plaintiff a judgment by default in the unchallenged amounts specified in the Motion and Affidavit.

#### CONCLUSION

For the reasons stated in this Memorandum of Decision, the court grants the plaintiff's Motion for Default Judgment filed by the Indiana Department of Workforce Development against the defendant Daniel Steven Coapstick. Judgment is entered in favor of the plaintiff and against the defendant pursuant to 11 U.S.C. § 523(a)(2)(A) and § 523(a)(7) in the amount of \$4,471.25, plus costs of \$293.00 and attorney's fees. Within fourteen (14) days of the date of this Memorandum of Decision, the plaintiff shall file with the court an application for reasonable compensation for actual, necessary services rendered, in compliance with 11 U.S.C. § 330.

SO ORDERED.

/s/ HARRY C. DEES, JR.  
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HARRY C. DEES, JR., JUDGE  
UNITED STATES BANKRUPTCY COURT