

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
SCOTT CHESTER LINVILLE,)	CASE NO. 12-31994 HCD
)	CHAPTER 7
)	
DEBTOR.)	
)	
)	
RAYMOND DEVER,)	
)	
PLAINTIFF,)	
vs.)	PROC. NO. 12-3060
)	
SCOTT CHESTER LINVILLE,)	
)	
DEFENDANT.)	

Appearances:

Martin T. Fletcher, Sr., Esq., counsel for plaintiff, 803 South Calhoun Street, Suite 400, Fort Wayne, Indiana 46802.

MEMORANDUM OF DECISION

At South Bend, Indiana, on December 20, 2012.

Before the court is the Motion for Summary Judgment filed by the plaintiff Raymond Dever, creditor of the debtor, against the defendant, chapter 7 debtor Scott Chester Linville. For the reasons set forth below, the court hereby vacates its Order taking the Motion for Summary Judgment under advisement and dismisses the adversary proceeding without prejudice for lack of personal jurisdiction over the defendant.¹

On August 23, 2012, the plaintiff filed a Complaint to Determine Dischargeability pursuant to 11 U.S.C. § 523(a)(19). On November 2, 2012, he filed a Motion for Summary Judgment and brief in

¹ 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).

support. The defendant did not respond to the Complaint or to the Motion. On December 17, 2012, after the time for response had passed, the court took the Motion under advisement.

On the same day that the plaintiff filed his Complaint, the Clerk of the Court issued to the plaintiff a summons with an appended certificate of service. *See* R. 2; Fed. R. Civ. P. 4(b). However, the plaintiff did not execute the certificate of service and file it with the court to demonstrate compliance with the service of process requirements of Federal Rule of Civil Procedure 4(l). “Both Fed. R. Civ. P. 4 and 5 require that service be filed with the court.” *Autotech Techs. LP v. Integral Research & Dev. Corp.*, 499 F.3d 737, 748 (7th Cir. 2007), *cert. denied*, 552 U.S. 1231 (2008). When a certificate of service is filed, the court has “clear proof that service has been accomplished.” *Ives v. Guilford Mills, Inc.*, 3 F.Supp.2d 191, 195 (N.D.N.Y.1998).

“Valid service of process is necessary in order to assert personal jurisdiction.” *In re Smith*, 111 F.3d 133 at *1 (7th Cir. 1997) (citing *Omni Capital Int’l*, 484 U.S. 97, 104, 108 S. Ct. 404, 98 L.Ed.2d 415 (1987)); *see also In re Haughee*, 428 B.R. 828, 832 (Bankr. N.D. Ind. 2010) (finding that court lacked personal jurisdiction over defendant who was never effectively served). Proof of service of the summons must be satisfied before a court may assert personal jurisdiction over a defendant. *See United States v. Ligas*, 549 F.3d 497, 500 (7th Cir. 2008); *Silva v. City of Madison*, 69 F.3d 1368, 1376 (7th Cir. 1995), *cert. denied*, 517 U.S. 1121 (1996). Courts generally require that a certificate of service be filed with the court when a pleading, motion, or other paper is served on the parties. *See* N.D. Ind. L.B.R. B-9013-4 (“Proof of Service”); *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”). “Certainly, if a paper filed with the court does not contain the required certificate of service, a court may disregard it.” *Russell v. City of Milwaukee*, 338 F.3d 662, 666 (7th Cir. 2003) (*quoted in Autotech Techs.*, 499 F.3d at 748); *see* N.D. Ind. L.B.R. B-9013-4 (“The court may take no action with regard to any pleading . . . unless accompanied by a proper proof or certificate of service.”).

Without a certificate of service, the court is unable to determine whether the defendant has been served. There is no evidence on this record that service of process was effected upon the defendant and on his attorney. *See* Fed. R. Bankr. P. 7004(b)(9), (g). There is no indication that service was made within 14 days after the summons was issued, as required by Bankruptcy Rule 7004(e). The record does not reflect a request by the plaintiff for issuance of an alias summons in order to attempt proper service on the defendant and his bankruptcy counsel after the 14-day deadline. Moreover, when a defendant is not served within 120 days after the complaint is filed, the court may dismiss the action without prejudice. *See* Fed. R. Civ. P. 4(m); *see Cardenas v. City of Chicago*, 646 F.3d 1001, 1007-08 (7th Cir. 2011). The 120-day bar date is tomorrow, December 21, 2012. The court concludes that it does not have personal jurisdiction over the defendant charged in the plaintiff's Complaint and therefore cannot consider the Motion for Summary Judgment.

Accordingly, the Court's Order of December 17, 2012, taking the Motion for Summary Judgment under advisement is now set aside. Moreover, in consideration of the lack of a certificate of service demonstrating effective service of process and the consequent lack of jurisdiction over the named defendant, the court dismisses the adversary proceeding without prejudice.

CONCLUSION

For the reasons set forth in this Memorandum of Decision, the Court's Order of December 17, 2012 is vacated. The Complaint filed by the plaintiff Raymond Dever against the defendant Scott Chester Linville is dismissed without prejudice.

SO ORDERED.

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