

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

IN THE MATTER OF)	
)	
LAWRENCE RAYMOND SHERWOOD, SR.,)	CASE NO. 12-33175 HCD
)	CHAPTER 7
DEBTOR.)	
)	
)	
INDIANA DEPARTMENT OF WORKFORCE)	
DEVELOPMENT,)	
)	
PLAINTIFF,)	
vs.)	PROC. NO. 12-3078
)	
LAWRENCE RAYMOND SHERWOOD, SR.,)	
)	
DEFENDANT.)	

DECISION and ORDER

At South Bend, Indiana, on February 4, 2013.

Before the court is the Motion for Entry of Default filed by the Indiana Department of Workforce Development, plaintiff herein, against the chapter 7 debtor Lawrence Raymond Sherwood, Sr. For the reasons that follow, the court denies the Motion.¹

When the plaintiff commenced this adversary proceeding on November 28, 2012, by filing a Complaint to Determine Dischargeability of Debt, the court issued a summons to the plaintiff the same day. On December 21, 2012, the plaintiff filed Certificates of Service declaring that service was made on December 12, 2012, to “Cassie Shepherd” and “Anita Gloyeski, Atty.,” and was mailed to unclearly handwritten addresses. *See* R. 4, 5. Superimposed upon the Certificates of Service were photocopied attachments, the Certified Mail Receipts, reporting that certified delivery was made to this debtor, Lawrence R. Sherwood (with unsigned receipt), and to his bankruptcy attorney, Patrick Seese (with signed receipt).

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).

Under the federal bankruptcy rules, delivery of the summons and a copy of the Complaint was required to be made on or before December 12, 2012, which was 14 days after the summons was issued. *See* Fed. R. Bankr. P. 7004(e). Because the defendant was a debtor, service of the summons and complaint was required to be made upon the debtor defendant Lawrence Raymond Sherwood, Sr., and upon his bankruptcy attorney, Patrick Seese, by December 12, 2012. *See* Fed. R. Bankr. P. 7004(b)(9), 7004(g).

In this case, the court finds that the plaintiff's Certificates of Service declared under penalty of perjury that service was made to the wrong defendant and wrong attorney at illegible addresses. Even though the attached Certified Mail Receipts stated that the certified delivery was made to the proper defendant and to his bankruptcy attorney, the declarant certified that service was made to the other parties.

"Service in accordance with bankruptcy procedure rules is an issue of fact for the bankruptcy court to decide." *Johnson v. RJM Acquisitions, LLC*, 2012 WL 930386 at *5 (S.D. Ill. March 19, 2012). The court determines that the conflicting information on the carelessly prepared Certificates of Service fails to establish that the plaintiff satisfied the service requirements under Federal Rule of Bankruptcy Procedure 7004(b)(9) and Rule 7004(g).² *See, e.g., In re Vincent*, 2006 WL 4452998 at *1 (Bankr. D. Nev. Jan. 25, 2006) (certificate of service stating only that service was made to "debtor" was deficient certificate). It concludes that the plaintiff has not demonstrated effective service of process on the defendant debtor and his bankruptcy counsel. However, the court in its discretion grants the plaintiff fourteen (14) days from the date of this Decision and Order to obtain an alias summons, to serve the proper parties properly, and to file a certificate of service demonstrating valid service of process.

² The court notes that certificates of service filed by this plaintiff in this court have been wrongly and sloppily prepared in the past. *See In re Haughee*, 428 B.R. 828, 832 (Bankr. N.D. Ind. 2010) ("In the Seventh Circuit, service of process 'by the letter of the law' is absolutely necessary in order for a court to acquire personal jurisdiction over a defendant, and even though it may be established that a defendant had some form of notice of pending litigation, absent effective initial service of process, a judgment against that defendant must be set aside.") (citing *Mid-Continent Wood Prods., Inc. v. Harris*, 936 F.2d 297, 301 (7th Cir. 1991)).

Because the plaintiff has not complied with the federal rules governing service of process, the defendant has not been duly served the summons and complaint, and this court may not exercise personal jurisdiction over him. *See United States v. Ligas*, 549 F.3d 497, 500 (7th Cir. 2008); *see also In re Flaherty*, 432 B.R. 742, 749 (Bankr. N.D. Ill. 2010); *In re Haughee*, 428 B.R. 828, 832 (Bankr. N.D. Ind. 2010). Without the establishment of personal jurisdiction over the defendant in this adversary proceeding, the court cannot consider a request for entry of default. The court therefore is without jurisdiction to consider the plaintiff's Motion for Entry of Default.³

For these reasons, the Motion for Entry of Default is denied.

SO ORDERED.

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

³ The court notes that previous motions for entry of default, similar or identical to the one found in this record, have been found to be defective. *See, e.g., IDWD v. Poe, Sr.*, Case No. 12-30526, Proc. No. 12-3033 (Mem. Op. 12/12/12); *IDWD v. Davis*, Case No. 11-30889, Proc. No. 11-3040 (Mem. Op. 05/02/12). Strict adherence to Rule 7055 of the Federal Rules of Bankruptcy Procedure and Rule 55 of the Federal Rules of Civil Procedure is required. A plaintiff must distinguish between an "entry of default" and "judgment by default" and must follow the two-step process of establishing proof of a default and then justification for a judgment by default. *See In re Catt*, 368 F.3d 789, 793 (7th Cir. 2004). To obtain an entry of default, the plaintiff must demonstrate that (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). He or she must submit a sworn statement that verifies proper service of process of the summons and complaint (pursuant to Bankruptcy Rule 7004), the defendant's failure to respond, and expiration of the time for a response. When the request for entry of default is filed *with an affidavit*, the clerk enters the party's default. The entry of default under Rule 55(a) must precede the grant of a default judgment under Rule 55(b). "Once the default is established, and thus liability, the plaintiff still must establish his entitlement to the relief he seeks." *In re Catt*, 368 F.3d at 793.