

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF INDIANA  
FORT WAYNE DIVISION

IN RE: CASE NO. 11-10975 )  
)  
PAUL R. WARD )  
CLAUDIA J. WARD )  
)  
Debtors )  
)  
)  
)  
PAUL R. WARD )  
CLAUDIA J. WARD )  
)  
Plaintiffs )  
)  
vs. )  
)  
CITIFINANCIAL SERVICES, INC. )  
)  
Defendant )

**NOT INTENDED FOR PUBLICATION**

PROC. NO. 15-1148

**DECISION AND ORDER DENYING MOTION FOR DEFAULT JUDGMENT**

On April 27, 2016.

By this adversary proceeding, the debtors are asking that funds which apparently have been deposited with the Clerk of the Court, as unclaimed funds for the benefit of the defendant,<sup>1</sup> either “receive proper disbursement . . . or . . . be returned to [the debtors].” Citifinancial has not responded and the matter is before the court on the plaintiffs’ motion for default judgment.

A default judgment is not a matter of right. See e.g., J & J Sports Productions, Inc. v. Kotsopoulos, 2015 WL 5730343 (N.D. Ind. 2015); Sims v. Johnson, 2011 WL 839671 \*2 (N.D. Ind. 2011); Abdul-Wadood v. Wright, 1995 WL 905228 (N.D. Ind. 1995). It is a matter committed to the court’s discretion. Dundee Cement Co. v. Howard Pipe & Concrete Products, Inc., 722 F.2d

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<sup>1</sup>The court says “apparently” because there are no allegations to that effect.

1319, 1322 (7th Cir. 1983); Duling v. Markun, 231 F.2d 833, 836 (7th Cir. 1956). A defendant's failure to respond to a complaint against it does not mean that the plaintiff is entitled to the relief it seeks. Nishimatsu Constr. Co. Ltd. v. Houston Nat'l Bank, 515 F.2d 1200, 1206 (5th Cir. 1975). Instead, the default is nothing more than an admission of the well-pleaded factual allegations contained in the complaint. Id. Those allegations must still state a legitimate claim for relief before the plaintiff is entitled to the entry of judgment in its favor. Id. See also, Black v. Lane, 22 F.3d 1395, 1399 (7th Cir. 1994); United States v. Di Mucci, 879 F.2d 1488, 1497 (7th Cir. 1989); Dundee Cement Co. v. Howard Pipe & Concrete Products, Inc., 722 F.2d 1319, 1323 (7th Cir. 1983). Consequently, in passing upon a motion for default judgment, the court has a duty to examine the plaintiff's allegations and satisfy itself that the entry of judgment based upon them would be appropriate. See, Weft, Inc. v. G.C. Inv. Associates, 630 F. Supp. 1138, 1141 (E.D. N.C. 1986), aff'd sub nom Weft, Inc. v. Georgaide, 822 F.2d 56 (4th Cir. 1987). See also, Aldabe v. Aldabe, 616 F.2d 1089, 1092 (9th Cir. 1980) (affirming trial court's denial of motion for default judgment and sua sponte dismissal due to the complaint's failure to state a claim for relief).

Before we get to that point, however, the court must first satisfy itself that it has the subject matter jurisdiction necessary to decide the case before it. Foster v. Hill, 497 F.3d 695, 696-97 (7th Cir. 2007) ("It is the responsibility of a court to make an independent evaluation of whether subject matter jurisdiction exists in every case."); Johnson v. Wattenbarger, 361 F.3d 991, 992 (7th Cir. 2004) ("All too often both litigants and judges disregard their first duty in every suit: to determine the existence of subject-matter jurisdiction."). To this end, every complaint is required to contain a "short and plain statement of the grounds for the court's jurisdiction," Fed. R. Civ. P. Rule 8(a)(1), and whether the matter is core or non-core. Fed. R. Bankr. P. Rule 7008. This statement "must be

alleged affirmatively and distinctly and cannot be established ‘argumentatively or by mere inference.’” McCready v. eBay, Inc., 453 F.3d 882, 890 (7th Cir. 2006) (quoting 5 Charles Alan Wright & Arthur R. Miller, Fed. Prac. & Proc. § 1206). The plaintiffs’ complaint fails to satisfy these requirements. It contains no statement whatsoever regarding this court’s jurisdiction. Without it, the complaint fails to state a claim for relief.

Plaintiffs’ motion for default judgment is DENIED. Any amended complaint shall be filed and served within fourteen (14) days.<sup>2</sup> The failure to do so will result in the dismissal of this proceeding without further notice.

SO ORDERED.

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

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<sup>2</sup>In addition to including the allegations required by Rule 8 and Rule 7008, the plaintiffs may want to take the opportunity to clarify other aspects of this proceeding. Are they asking the court to order the defendant to affirmatively do something; if so, what? See, In re Viney, 369 B.R. 392, 395 (Bankr. N.D. Ind. 2007). Are they seeking an order directing the Clerk of the Court to do something in particular with the money; if so, what might that be and does the Clerk need to be named as a defendant? See, In re Chochos, 2007 WL 1810556 \*4 n.2 (Bankr. N.D. Ind. 2007). What is the basis of their claimed right to funds that have been identified as belonging to someone else and do the facts alleged state a claim for such relief?