

UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF MICHIGAN

In re:

PT LIQUIDATION CORP.,

Debtor.

Case No. DK 16-05906
Hon. Scott W. Dales
Chapter 7

STEPHEN L. LANGELAND, chapter 7
trustee,

Plaintiff,

Adversary Pro. No. 17-80189

v.

TRU DIE CAST CORPORATION,

Defendant.

ORDER DENYING DEFAULT JUDGMENT MOTION

PRESENT: HONORABLE SCOTT W. DALES
Chief United States Bankruptcy Judge

This matter is before the court on Plaintiff's Motion for Entry of Default Judgment (ECF No. 8, the "Motion") filed on February 7, 2018. After the Plaintiff submitted a proposed order through the CM/ECF E-Orders program, the court reviewed the docket including the certificates of service. For the following reasons, the court is not satisfied that the Plaintiff properly served the Summons and Complaint on the Defendant, and will therefore deny the Motion without prejudice.

The Clerk noted that the Plaintiff's original proof of service dated November 22, 2017 (the "First POS," ECF No. 3) failed to identify the person purportedly served. *See* Notice of Defective Entry or Filing (the "Clerk's Notice," ECF No. 4). Evidently in response to the Clerk's Notice,

the Plaintiff attempted to correct the omission by typing “Bruce Lehmann, 13066 California Rd., New Troy, MI 49119” over the originally signed (and defective) First POS, and filing the amended document as ECF No. 5 (the “Second POS”) on December 1, 2017. Neither the First POS nor the Second POS indicates the date on which the Plaintiff’s agent purportedly served the Summons and Complaint. Moreover, the Second POS lists “Bruce Lehmann” as the person served. Mr. Lehmann is obviously not the Defendant.

According to the Affidavit of Dena H. Shuayto filed in support of the Motion, the Plaintiff endeavored to serve the Defendant mailing the Summons and Complaint to the corporation’s registered agent under Fed. R. Bankr. P. 7004(b)(3). That rule permits service on a domestic or foreign corporation “by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process” Fed. R. Bankr. P. 7004(b)(3). According to the Michigan Secretary of State’s online records, however, the Defendant’s registered agent is “Bruno Lehmann,” not “Bruce Lehmann.” Although it is certainly possible that Mr. Lehmann goes by “Bruce,” it is equally possible, given the history of errors in the proofs of service, that a typographical or other clerical error caused the Plaintiff to mail the summons and complaint to someone who is not the registered agent or even an actual person. Almost certainly, any defects in the process or service of process could have been waived or addressed had the Defendant answered the Complaint, but the Plaintiff filed the Motion under Fed. R. Civ. P. 55 precisely because the Defendant has not responded.

In general, to ensure that it has personal jurisdiction over defaulting defendants, and to protect its judgments against collateral attack with the attendant and avoidable expense, the court scrupulously reviews proofs of service, as it did in this case. Every plaintiff’s attorney should do the same, carefully supervising the jurisdictionally significant act of serving the summons and

complaint - the singular event that formally subjects a person to the court's authority. *See* Fed. R. Bankr. P. 7004(f). The Supreme Court has signaled the importance of service of process in initiating a civil action:

. . . [O]ne becomes a party officially, and is required to take action in that capacity, only upon service of a summons or other authority-asserting measure stating the time within which the party served must appear and defend. . . . Unless a named defendant agrees to waive service, the summons continues to function as the *sine qua non* directing an individual or entity to participate in a civil action or forgo procedural or substantive rights. . . .

Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 350-51 (1999) (citations omitted). Under the circumstances, the court will deny the Motion, without prejudice.

Plaintiff's counsel of record may make arrangements to amend the proof of service under Fed. R. Civ. P. 4(l)(3) if, after investigation, he is satisfied that his office properly effected service within the time that Fed. R. Bankr. P. 7004(e) requires. Otherwise, he may ask the Clerk to issue a refreshed summons, and then arrange for prompt service in accordance with the rules. To assist in this effort, the court will grant a modest extension of the 90 day period for effecting service under Fed. R. Civ. P. 4(m).

Finally, because of its doubts about service, the court is also not satisfied that the Defendant is in default of any obligation to respond, *Murphy Brothers, Inc.*, 526 U.S. at 350-51, so it finds cause to set aside the entry of default under Fed. R. Civ. P. 55(c).

NOW, THEREFORE, IT IS HEREBY ORDERED as follows:

1. the Motion (ECF No. 8) is DENIED without prejudice, and the Clerk's entry of default (ECF No. 6) is set aside for cause; and

2. the 90 day period for effecting service under Fed. R. Civ. P. 4(m) is extended to March 20, 2018.

IT IS FURTHER ORDERED that the Clerk shall serve a copy of this Order pursuant to Fed. R. Bankr. P. 9022 and LBR 5005-4 upon Brendan G. Best, Esq.

END OF ORDER

IT IS SO ORDERED.

Dated February 12, 2018



A handwritten signature in black ink, appearing to read "S. W. Dales", written over a horizontal line.

Scott W. Dales
United States Bankruptcy Judge