

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

FRANCOIS JOHNSON

PLAINTIFF

v.

Case No. 3:17-cv-00127-KGB

ABERNATHY MOTOR COMPANY, *et al.*

DEFENDANTS

ORDER

Before the Court is plaintiff Francois Johnson's motion for default judgment against defendant Abernathy Motor Company ("Abernathy") (Dkt. No. 11). Because Mr. Johnson has failed to submit proof of service upon Abernathy to the clerk, the Court denies without prejudice Mr. Johnson's motion for default judgment.

Per Rule 55(a) of the Federal Rules of Civil Procedure, a party seeking a default judgment must first submit proof to the clerk that the opposing party has failed to plead or otherwise defend itself. Fed. R. Civ. P. 55(a); *Fraserside IP L.L.C. v. Youngtek Solutions Ltd.*, 796 F. Supp. 2d 946, 951 (N.D. Iowa 2011) (citation and internal quotation marks omitted). The Court notes that Mr. Johnson was previously ordered to serve the complaint and summons upon Abernathy's registered agent via certified mail, restricted delivery, with a return receipt requested (Dkt. No. 5, ¶ 3). The record reflects that Mr. Johnson unsuccessfully attempted to serve Abernathy via the ordered method (Dkt. No. 16). Mr. Johnson has failed to submit proof of any other effective service upon Abernathy.

Because Mr. Johnson has failed to submit the proof necessary for the clerk to enter a default under Rule 55(a), the Court denies without prejudice Mr. Johnson's motion for default judgment (Dkt. No. 11). The Court further orders Mr. Abernathy to supplement his affidavit in support of his motion for default with information sufficient to allow the Court to assess service under the

Federal Rules of Civil Procedure, or, in the alternative, provide updated information to the U.S. Marshal's Office so that they may re-attempt service upon Abernathy.

Finally, the Court notes that a related case, *Johnson v. Instant Auto Credit Corp.*, No. 3:17-cv-115-KGB (E.D. Ark. May 10, 2017), is also pending before this Court. Per Federal Rule of Civil Procedure 42(a), the Court may consolidate any actions that involve a common question of law or fact. The Court orders the parties to show cause within ten (10) days of the entry of this Order why the present suit and *Johnson v. Instant Auto Credit Corp.* should not be consolidated.

It is therefore ordered that:

1. Mr. Johnson's motion for default judgment is denied (Dkt. No. 11).
2. Mr. Johnson is ordered to supplement his affidavit in support of his motion for default with information sufficient to allow the Court to assess service under the Federal Rules of Civil Procedure, or, in the alternative, provide updated information to the U.S. Marshal's Office so that they may re-attempt service upon Abernathy.
3. The parties are ordered to show cause, within ten days of the entry of this Order, why this action should not be consolidated with *Johnson v. Instant Auto Credit Corp.*, No. 3:17-cv-115-KGB (E.D. Ark. May 10, 2017).

So ordered this the 12th day of March, 2018.



Kristine G. Baker
United States District Judge