

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

THOSE CERTAIN UNDERWRITERS
AT LLOYD'S, LONDON, individually
and severally subscribing to policy
number A0364/15000

Plaintiff,

v.

Case No: 2:15-cv-669-FtM-38CM

GONE COUNTRY MOTOR
SPORTS, INC., TIMOTHY LLOYD,
SCOTT KIRK, MARLAYNA
GOMEZ and JARED O'KEEFE,

Defendants.

ORDER

Before the Court is Plaintiffs' Motion for Entry of Default Against Defendant Gone Country Motor Sports, Inc. d/b/a Redneck Yacht Club ("Gone Country"). Doc. 66. Plaintiff moves, pursuant to Federal Rule of Civil Procedure 55(a), for entry of Clerk's default against Defendant Gone Country for failure to respond to the Complaint. For the reasons that follow, the motion is due to be granted.

Pursuant to Rule 55(a), Federal Rules of Civil Procedure, "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Similarly, Middle District of Florida Local Rule 1.07(b) provides:

When service of process has been effected but no appearance or response is made within the time and manner provided by Rule 12, Fed. R. Civ.

P., the party effecting service shall promptly apply to the Clerk for entry of default pursuant to Rule 55(a), Fed. R. Civ. P.

M.D. Fla. R. 1.07(b). Prior to directing the Clerk to enter a default, the Court must first determine whether Plaintiff properly effected service of process. *United States v. Donald*, No. 3:09-cv-147-J-32HTS, 2009 WL 1810357, at *1 (M.D. Fla. June 24, 2009).

Service on a corporation can be made by any manner accepted in the state or “by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process[.]” Fed. R. Civ. P. 4(h)(1)(A), (e)(1). Section 48.081, Florida Statutes, provides a hierarchy for service of process upon a corporation. A private corporation may be served by serving process on the president, vice president, or other head of the corporation, and in the absence of any such persons, on other corporate employees, including any officer or director. Fla. Stat. § 48.081(1)(a)-(d). As an alternative, process may be served on a registered agent of the corporation or an employee of the registered agent. *Id.* § 48.081(3)(a).

Here, the return of service states that on November 12, 2015, Plaintiff’s process server delivered a true copy of the Summons and Complaint upon Robert Demeo as Registered Agent for Gone Country Motor Sports, Inc. d/b/a Redneck Yacht Club, at 15775 Pine Ridge Road, Fort Myers, FL 33908. Doc. 56. Affidavits by process servers constitute a *prima facie* showing that defendants have been served. *Udoinyon v. The Guardian Security*, 440 Fed. App’x 731, 735 (11th Cir. 2011) (unsworn and unsigned letters insufficient to call into question *prima facie* evidence

of service consisting of process server's sworn return); *Burger King Corp. v. Eupierre*, Case No. 12-20197-CIV, 2012 WL 2192438, at *2 (S.D. Fla. June 14, 2012). Service of process therefore was properly effected under Federal Rule of Civil Procedure 4(h)(1)(A), (e)(1) and § 48.081(3)(a), Florida Statutes. Plaintiff subsequently filed an Amended Complaint for Declaratory Judgment and/or Reformation on December 23, 2015. Doc. 27. Plaintiff's amendment only sought to change a typographical error in the original complaint. Doc. 25 at 2. All of the claims against Gone Country remained the same. *See* Docs. 1, 27. Federal Rule of Civil Procedure 5(a)(2) states, "[n]o service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4." Accordingly, Plaintiff did not have to subsequently serve the Amended Complaint under Rule 4.

Pursuant to the Federal Rules of Civil Procedure, a defendant must serve an answer within 21 days after being served with the summons and complaint or within 14 days after service of an amended pleading. Rules 12(a)(1)(A), 15(a)(3), Fed. R. Civ. P. Gone Country has failed to do so within the time period; therefore, entry of Clerk's Default pursuant to Federal Rule of Civil Procedure 55(a) and Middle District of Florida Local Rule 1.07(b) is appropriate.

ACCORDINGLY, it is hereby

ORDERED:

Plaintiffs' Motion to Entry of Default Against Defendant Gone Country Motor Sports, Inc. d/b/a Redneck Yacht Club (Doc. 66) is **GRANTED**. The Clerk is directed

to enter a Clerk's Default against Defendant Gone Country Motor Sports, Inc. d/b/a Redneck Yacht Club.

DONE and **ORDERED** in Fort Myers, Florida on this 15th day of June, 2016.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record