

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

DENNIS HAYNES, individually

Plaintiff,

v.

Case No: 2:17-cv-223-FtM-99CM

PERKINS & MARIE
CALLENDER'S LLC,

Defendant.

ORDER

This matter comes before the Court upon review of Plaintiff's Motion for Clerk's Entry of Default (Doc. 9) filed on June 1, 2017. Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure 55(a), Plaintiff moves for entry of Clerk's default against Defendant Perkins & Marie Callender's, LLC. Doc. 9. On June 1, 2017, Plaintiff filed a Return of Service. Doc. 8.

Pursuant to Rule 55(a) of the 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 where the district court is located. Fed. R. Civ. P. 4(h)(1)(A), (e)(1). Section 48.062 of the Florida Statutes provides that process against a limited liability company may be served upon the company's registered agent, or an employee of the registered agent during the first attempt at service. Fla. Stat. § 48.062(1). According to the Florida Statutes, each limited liability company must designate and continuously maintain a registered office in this state. Fla. Stat. § 605.0113(1)(a). The registered agent must be an individual who resides in this state, or a foreign or domestic entity authorized to transact business in this state and whose business address is identical to the address of the registered office. Fla. Stat. § 605.0113(1)(b)(1).

Here, the Return of Service states that on April 28, 2017, a process server for Caplan, Caplan & Caplan Process Servers delivered a true copy of the Summons in a Civil Action (21) Days and Complaint to CT Corporation System, as a registered agent for Defendant, at 1200 South Pine Island Road, Plantation, FL 33324. Doc. 8. The Return of Service further states that the process server served the registered agent by serving Donna Moch, who is an employee of the registered agent. *Id.* A search of the Florida Department of State, Division of Corporations' website reveals that Defendant's registered agent is CT Corporation System at 1200 South Pine Island

Road, Plantation, FL 33324.¹ Affidavits by process servers constitute a prima facie showing that defendants have been served. *Udoinyion v. The Guardian Security*, 440 F. App'x 731, 735 (11th Cir. 2011) (holding that 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 upon Defendant therefore was properly effected under Rule 4(h) of the Federal Rules of Civil Procedure.

Pursuant to Rule 12(a)(1)(A) of the Federal Rules of Civil Procedure, a defendant must serve an answer within 21 days after being served with the summons and complaint. Here, Defendant has failed to do so within the time period; therefore, the entry of Clerk's Default as to Defendant pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Middle District of Florida Local Rule 1.07(b) is appropriate.

ACCORDINGLY, it is hereby

ORDERED:

1. Plaintiff's Motion for Clerk's Entry of Default (Doc. 9) is **GRANTED**.
2. The Clerk is directed to enter a Clerk's Default against Defendant Perkins & Marie Callender's, LLC.

DONE and **ORDERED** in Fort Myers, Florida on this 1st day of June, 2017.

¹ www.sunbiz.org.



CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record