

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

HANCOCK SHOPPES, LLC,

Plaintiff,

v.

Case No: 2:17-cv-364-FtM-99MRM

RETAINED SUBSIDIARY ONE, LLC,
KASH N' KARRY FOOD STORES, INC.,
THE KROGER CO. OF MICHIGAN and
FAMILY CENTER, INC.,

Defendants.

ORDER

Pending before the Court is the Motion for Entry of Clerk's Default (Doc. 50) against Defendant Kash N' Karry Food Stores, Inc. filed on August 3, 2017. No response was filed to the Motion. Plaintiff Hancock Shoppes, LLC, requests that the Court direct the Clerk of Court to enter a default against Defendant Kash N' Karry Food Stores, Inc. for failure to appear, plead, or otherwise defend itself in this action. (*Id.* at 3).

Pursuant to Fed. R. Civ. P. 55(a), "[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." Prior to directing the Clerk of Court to enter a default, however, the Court must first determine whether Plaintiff properly effected service of process. *Chambers v. Halsted Fin. Servs., LLC*, No. 2:13-CV-809-FTM-38, 2014 WL 3721209, at *1 (M.D. Fla. July 28, 2014). Plaintiff has the burden of establishing effective service of process. *See Zamperla, Inc. v. S.B.F. S.R.L.*, No. 6:13-CV-1811-ORL-37, 2014 WL 1400641, at *1 (M.D. Fla. Apr. 10, 2014).

Pursuant to Fed. R. Civ. P. 4(h)(1)(B), a corporation may be served by “delivering a copy of the summons and of the complaint to . . . any other agent authorized by appointment or by law to receive service of process.” In this case, Plaintiff contends that it served Kash N’ Karry Food Stores, Inc. by serving its Registered Agent on June 9, 2017. (*See* Doc. 22 at 1). Upon review, it appears Kash N’ Karry Food Stores, Inc. has been properly served. Moreover, Kash N’ Karry Food Stores, Inc. has failed to plead or otherwise defend this action. Accordingly, the Court finds that the entry of a clerk’s default against Kash N’ Karry Food Stores, Inc. is appropriate.

Accordingly, it is hereby **ORDERED**:

- 1) The Motion for Entry of Clerk’s Default (Doc. 50) is **GRANTED**.
- 2) The Clerk of Court is directed to enter a default against Kash N’ Karry Food Stores, Inc.

DONE AND ORDERED in Fort Myers, Florida on August 25, 2017.



MAC R. MCCOY
UNITED STATES MAGISTRATE JUDGE

Copies furnished to:

Counsel of Record
Unrepresented Parties