

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

ROSARIO BATISTA,

Plaintiff,

v.

Case No: 2:18-cv-23-FtM-99CM

KAVULICH & ASSOCIATES, PC,
GARY KAVULICH and 2524, LLC,

Defendants.

ORDER

This matter comes before the Court upon review of Plaintiff's Motion for Clerk's Entry of Default as to Defendant, 2524, LLC (Doc. 13) filed on February 13, 2018, Plaintiff's Motion for Clerk's Entry of Default as to Defendant, Kavulich & Associates, PC (Doc. 14) filed on February 13, 2018 and Plaintiff's Motion for Clerk's Entry of Default as to Defendant, Gary Kavulich (Doc. 15) filed on February 13, 2018. On January 24, 2018, Plaintiff filed Proofs of Service. Docs. 10, 11, 12.

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).

Limited liability companies and corporations 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. . . .” Fed. R. Civ. P. 4(h)(1)(B). Here, the Proof of Service as to 2524, LLC states that on January 22, 2018, a process server served the summons on Maria Ortiz, a person designated by law to accept service of process on behalf of 2524, LLC. Doc. 12. Similarly, the Proof of Service as to Kavulich & Associates, PC states that on January 22, 2018, a process server served the summons on Gary Kavulich, a person designated by law to accept service of process on behalf of Kavulich & Associates, PC. Doc. 10. Thus, service of process as to 2524, LLC and Kavulich & Associates, PC was properly effected under Federal Rule of Civil Procedure 4(h). Fed. R. Civ. P. 4(h)(1)(B).

With regard to an individual, the process server may deliver a copy of the summons and complaint to the individual personally, or “at the individual’s dwelling or usual place of abode or with someone of suitable age and discretion who resides there.” Fed. R. Civ. P. 4(e)(2)(A),(B). Here, the Proof of Service as to Gary Kavulich, individually, states that on January 22, 2018, a process server personally served the summons on Gary Kavulich at 181 Westchester Ave. Suite 500C, Port Chester, NY 10573. Doc. 11. Service of process therefore was properly effected

under Federal Rule of Civil Procedure 4(e). Fed. R. Civ. P. 4(e)(2)(A).

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, Defendants have failed to do so within the time period; therefore, the entry of Clerk's Default as to all Defendants 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:

1. Plaintiff's Motion for Clerk's Entry of Default as to Defendant, 2524, LLC (Doc. 13) is **GRANTED**.

2. Plaintiff's Motion for Clerk's Entry of Default as to Defendant, Kavulich & Associates, PC (Doc. 14) is **GRANTED**.

3. Plaintiff's Motion for Clerk's Entry of Default as to Defendant, Gary Kavulich (Doc. 15) is **GRANTED**.

4. The Clerk is directed to enter a Clerk's Default against Defendants 2524 LLC, Kavulich & Associates, PC and Gary Kavulich.

DONE and **ORDERED** in Fort Myers, Florida on this 13th day of February, 2018.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record