

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

**GATEWAY ONE LENDING &
FINANCE, LLC,**

Plaintiff,

v.

1:15-cv-1808-WSD

**GOLDEN AUTO BROKERS
INCORPORATED, a/k/a Golden
Auto Brokers, Inc. and RAY
MAURICE HAMILTON,**

Defendants.

OPINION AND ORDER

This matter is before the Court on Plaintiff Gateway One Lending & Finance, LLC's ("Plaintiff") Motion for Entry of Default Judgment [10] ("Renewed Motion for Default Judgment").

I. BACKGROUND

On May 20, 2015, Plaintiff filed its Complaint [1]. On June 4, 2015, Plaintiff filed returns of service on Defendants Golden Auto Brokers Incorporated ("Golden Auto") and Ray Maurice Hamilton ("Hamilton") (together, "Defendants"). ([4], [5]). On August 14, 2015, Plaintiff filed its Motion for Clerk's Entry of Default [6], and, the same day, the Clerk entered default as to

Golden Auto and Hamilton. On May 31, 2016, Plaintiff filed its Motion for Default Judgment [7].

Because Plaintiff's Complaint did not adequately show that the Court has diversity jurisdiction over this action, on September 22, 2016, the Court issued an Order [8] requiring Plaintiff to file an amended complaint adequately alleging the citizenship of the parties. On September 28, 2016, Plaintiff filed its Amended Complaint, which adequately alleges the parties' citizenship. In view of the Amended Complaint, on September 29, 2016, the Court issued an order denying, as moot, Plaintiff's Motion for Default Judgment. On December 28, 2016, Plaintiff filed its Renewed Motion for Default Judgment.

II. DISCUSSION

Because Plaintiff failed to properly allege diversity jurisdiction, the Court required it to file an Amended Complaint. Because Plaintiff filed an Amended Complaint, the Clerk's entry of default is required to be vacated. See Heritage Bank v. Quinnco Hinesville, LLC, No. CV414-268, 2016 WL 8200941, at *1 (S.D. Ga. Jan. 20, 2016).

Plaintiff's Renewed Motion for Default Judgment is required to be denied without prejudice, because Plaintiff failed to serve Defendants with its Amended Complaint. Service under Rule 5 applies where, as here, the amended complaint

does not assert new claims for relief. U.S. Bank Nat'l Ass'n v. Sararo, No. 2:16-CV-733-FTM-99CM, 2016 WL 7157521, at *2 (M.D. Fla. Dec. 8, 2016). Rule 5(a)(1)(B) of the Federal Rules of Civil Procedure states that a pleading filed after the original complaint must be served on every party unless ordered otherwise by the Court. Fed. R. Civ. P. 5(a)(1)(B). Plaintiff did not include any certificate of service or otherwise indicate that it served Defendants with the Amended Complaint upon which it seeks default judgment, and Plaintiff's Motion for Default Judgment is denied without prejudice.

Plaintiff shall, on or before March 24, 2017, serve, pursuant to Federal Rule of Civil Procedure 5, its Amended Complaint on Defendants and file with the Court its proof of service. Defendants shall, pursuant to Rule 15 of the Federal Rules of Civil Procedure, have fourteen (14) days after service of the Amended Complaint within which to respond to it. If Defendants do not file any response within the time period allowed, Plaintiff may, within twenty one (21) days of Defendants' failure to respond, file its motion for default judgment. The Court will not allow Plaintiff any further opportunities to follow the proper procedure to obtain the default judgment it seeks.

III. CONCLUSION


For the foregoing reasons,

IT IS HEREBY ORDERED that the Clerk's Entry of Default is **VACATED**.

IT IS FURTHER ORDERED that Plaintiff Gateway One Lending & Finance, LLC's Motion for Entry of Default Judgment [10] is **DENIED WITHOUT PREJUDICE**.

IT IS FURTHER ORDERED that Plaintiff shall, on or before March 24, 2017, serve, pursuant to Federal Rule of Civil Procedure 5, its Amended Complaint on Defendants and file with the Court its proof of service. Defendants shall, pursuant to Rule 15 of the Federal Rules of Civil Procedure, have fourteen (14) days after service of the Amended Complaint within which to respond to it. If Defendants fail to respond within the time period allowed, Plaintiff may, within twenty one (21) days of Defendants' failure to respond, file its motion for default judgment. The Court will not allow Plaintiff any further opportunities to follow the proper procedure to obtain the default judgment it seeks.

SO ORDERED this 10th day of March, 2017.



WILLIAM S. DUFFEY, JR.
UNITED STATES DISTRICT JUDGE