

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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RCC VENTURES, LLC :
Plaintiff, :
: 1:17-cv-1585-GHW
-against- :
: OPINION AND ORDER
BRANDTONE HOLDINGS LIMITED, :
: Defendant. :
: X-----

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GREGORY H. WOODS, District Judge:

Plaintiff RCC Ventures, LLC (“RCC”) initiated this action on March 2, 2017 against Defendant Brandtone Holdings Limited (“Brandtone”), an Irish business corporation with a principal place of business in Dublin. Am. Compl. (ECF No. 7) (“AC”) ¶ 3. RCC is a debt advisory company that, among other things, introduces business to institutional lenders and arranges for institutional lenders to providing funding to businesses. AC ¶ 5. Brandtone is a mobile marketing firm. AC ¶ 6. RCC seeks damages for amounts allegedly owed it by Brandtone under an exclusive debt financing agreement.

On March 6, 2017, RCC filed with the Court an affidavit of service of a summons and the amended complaint. ECF No. 10. The affidavit indicates that service of process was made on “Brandtone, Inc. s/h/a Brandtone Holdings Limited” through the New York Secretary of State. *Id.* In a May 1, 2017 letter to the Court, RCC described “Brandtone, Inc.” as Brandtone’s “wholly owned subsidiary.” ECF No. 12. On June 14, 2017, RCC informed the Court of its intention to request a certificate of default and to move for default judgment. ECF No. 14. The Court issued an order the next day, advising RCC that the Court “will carefully scrutinize the issue of service of process prior to granting any default judgment,” and directed RCC to “the ample case law holding

that service of process on a subsidiary does not constitute valid service on the parent merely by virtue of the parent-subsidiary relationship.” ECF No. 15.

Shortly after entry of the Court’s June 15, 2017 order, RCC began the process of pursuing a default judgment against Brandtone. Upon RCC’s request, the Clerk of Court issued a certificate of default on July 6, 2017. ECF No. 17. The Court then issued an order to show cause why default judgment should not be entered against Brandtone on July 14, 2017. ECF No. 19. In accordance with the Court Individual Rules of Practice in Civil Cases, RCC supported its motion for default judgment with an attorney’s affidavit, a memorandum of law, and other required materials. ECF Nos. 21-22.

Despite the Court’s order explaining that it would carefully scrutinize whether service on Brandtone’s wholly owned subsidiary amounted to proper service on Brandtone before granting default judgment, RCC’s discussion of service on Brandtone was limited to the following: “On March 23, 2017, Plaintiff served the Summons and Complaint personally on Nancy Dougherty, the authorized agent in the Office of the Secretary of State of the State of New York.” Mem. of Law (ECF No. 21) at 4; *see also* Decl. of Chris Han (ECF No. 22) (“A copy of the Summons and Amended Complaint was served on Defendant on March 23, 2017 by personal service made on Nancy Dougherty, the authorized agent in the Office of the Secretary of State of the State of New York.”). RCC presented no argument as to why its method of service was effective as to Brandtone, nor did RCC address the case law specifically cited by the Court in its June 15, 2017 letter.

“A court may not properly enter a default judgment unless it has jurisdiction over the person of the party against whom the judgment is sought, which also means that he must have been effectively served with process.” *Acceptance Ins. Co. v. Home Med. Of Am., Inc.*, No. 04-cv-9338 (WHP), 2005 WL 3471780, at *2 (S.D.N.Y. Dec. 20, 2005) (quoting *Copelco Capital, Inc. v. Gen. Consul of Bolivia*, 940 F. Supp. 93, 94 (S.D.N.Y. 1996)); *see also* *Licci v. Lebanese Canadian Bank SAL*, 673 F.3d

50, 59 (2d Cir. 2012) (stating that “[t]he lawful exercise of personal jurisdiction by a federal court requires,” *inter alia*, “plaintiff’s service of process upon the defendant [to] have been procedurally proper”); *Aspex Eyewear, Inc. v. Cheuk Ho Optical Int’l Ltd.*, No. 00-cv-2389 (RMB), 01-cv-1315 (RMB), 2005 WL 3501900, at *1 (S.D.N.Y. Dec. 21, 2005) (“A default judgment ‘obtained by way of defective service is void *ab initio* and must be set aside as a matter of law. Plaintiff has the burden of demonstrating that service was proper.’” (quoting *Howard Johnson Int’l v. Wang*, 7 F. Supp. 2d 336 (S.D.N.Y. 1998), *aff’d*, 181 F.3d 82 (2d Cir. 1999))).

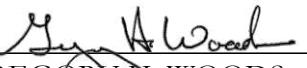
As the Court has already informed RCC, service of process on a subsidiary does not automatically constitute valid service on the parent. *See, e.g., Ehrenzeller v. McLane Foodservice, Inc.*, No. 13-6872, 2014 WL 325640, at *2 (E.D. Pa. Jan. 29, 2014) (“It is well-established that service upon the subsidiary does not constitute valid service upon the parent merely because of the relationship between the corporate entities.”); *Gilderhus v. Concentrix Corp.*, 825 F. Supp. 2d 414, 432 n.23 (W.D.N.Y. 2011) (“It is hornbook law that service of process on a subsidiary does not constitute service on a parent corporation, nor does service on a parent constitute service on the subsidiary. Except in exceptional circumstances not present here, the law respects separate corporate identities even where one corporation may wholly own another” (quoting *Sansui Elecs. Corp. v. Am. Southern Ins. Co.*, No. 88-cv-6184, 1992 WL 77591, at *4 (S.D.N.Y. Mar. 26, 1992))).

Because RCC has not demonstrated that service on Brandtone’s wholly owned subsidiary constituted effective service on Brandtone itself, the Court concludes that RCC has failed to make a *prima facie* showing of proper service of process. Accordingly, RCC’s motion for default judgment is DENIED, the order to show cause issued by the Court on July 14, 2017 (ECF No. 19) is VACATED, and the hearing scheduled for August 11, 2017 is adjourned. In addition, RCC is ORDERED TO SHOW CAUSE, no later than August 4, 2017, why this action should not be dismissed for failure to effectuate service in accordance with Federal Rule of Civil Procedure 4(h)(2).

RCC is further ORDERED to serve a copy of this order on Brandtone Holdings Limited, and to file proof of service on the docket.

SO ORDERED.

Dated: July 28, 2017
New York, New York



GREGORY D. WOODS
United States District Judge