

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:15-CV-37-FL

ARROW ENTERPRISE COMPUTING)
SOLUTIONS, INC., a Delaware corporation,)
)
Plaintiff,)
)
v.)
)
BLUEALLY, LLC, a Delaware limited)
liability company, BLUEALLY DIRECT,)
LLC, a Virginia limited liability company,)
NET DIRECT SYSTEMS, LLC, a North)
Carolina limited liability company; PHILIP)
ALBERT SANTONI, an individual, and)
CRISTA MARIE SANTONI, an individual,)
)
Defendants.)

ORDER

This matter is before the clerk on the Motion for Entry of Default [DE-33] filed by Plaintiff Arrow Enterprise Computing Solutions, Inc., (“Arrow”). Therein, Arrow requests that the undersigned enter default against Defendants Net Direct Systems, LLC (“Net Direct”) and Philip Albert Santoni and Crista Marie Santoni (the “Santonis”).

Rule 55 of the Federal Rules of Civil Procedure provides: “When 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.” Fed. R. Civ. P. 55(a). In this case, the undersigned finds that entry of default is appropriate as to Net Direct. The record shows that Arrow effected service on Net Direct’s registered agent via certified mail, return receipt requested, in accordance with N.C. Gen. Stat. § 1A-1, Rule 4(j).¹

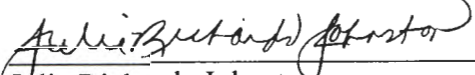
¹ The records of North Carolina Department of the Secretary State’s records show that Philip Santoni is the registered agent for Net Direct. *See* 2013 Net Direct Limited Liability Company Annual Report (March 27, 2013). Since the filing of this action, Net Direct has been administratively dissolved. *See* Certificate of Administrative

The undersigned cannot so find, however, as to the Santonis. Arrow contends that it properly effected service on the Santonis by sending a copy of the complaint and summonses, via certified mail, return receipt requested, to attorney James C. White. *See* Aff. of Service, Ex. B [DE-21-2] at p. 2 (stating in a cover letter sent with the service of process that White was being served in his “capacity as counsel for Philip Albert Santoni and Crista Marie Santoni”). Other than the cover letter Arrow provided as an exhibit to the proof of service, there is no other evidence before this court that Mr. White is, in fact, counsel for either of the Santonis, nor is there evidence that he had the authority to accept service on their behalf. *See, e.g., Davies v. Jobs & Adverts Online, GmbH*, 94 F. Supp. 2d 719, 722 (E.D. Va. 2000) (recognizing that “numerous federal courts have held that “[t]he mere relationship between a defendant and his attorney does not, in itself, convey authority to accept service” (quoting *United States v. Ziegler Bolt & Parts Co.*, 111 F.3d 878, 881 (Fed. Cir. 1997)). The cover letter itself fails to show that Mr. White had authority to accept service of process on the behalf of either Santoni defendant. *Id.* (explaining that “the party seeking to establish the agency relationship must show ‘that the attorney exercised authority beyond the attorney-client relationship, including the power to accept service’” and that “even where an attorney has broad power to represent a client, ‘these powers of representation alone do not create a specific authority to receive service’” (quoting *Ziegler*, 111 F.3d at 881)). Accordingly, the undersigned cannot at this time enter default against either Santoni defendant.

For the foregoing reasons, Arrow’s Motion for Entry of Default [DE-33] is ALLOWED solely as to Defendant Net Direct Systems, LLC. The Motion for Entry of Default [DE-33] is DENIED without prejudice as to Defendants Philip Albert Santoni and Crista Marie Santoni.

This denial is without prejudice to Arrow to file a renewed motion for entry of default within 30 days.

SO ORDERED. This the 16th day of November, 2015.



Julie Richards Johnston
Clerk of Court