

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
NEWNAN DIVISION

IN THE MATTER OF:	:	CASE NUMBERS
	:	
MICHAEL E. SUDDETH,	:	BANKRUPTCY CASE
	:	NO. 04-17273-WHD
Debtor.	:	
_____	:	
	:	
ROBERT CARDEN,	:	ADVERSARY PROCEEDING
	:	NO. 04-1050
Plaintiff,	:	
	:	
v.	:	
	:	
MICHAEL E. SUDDETH,	:	IN PROCEEDINGS UNDER
	:	CHAPTER 7 OF THE
Defendant.	:	BANKRUPTCY CODE

**ORDER**

Before the Court is the Motion for Judgment on the Pleadings filed by Robert Carden (hereinafter the "Plaintiff"). The Plaintiff seeks a judgment against Michael E. Suddeth (hereinafter the "Debtor") on a complaint to determine dischargeability of a particular debt. This matter constitutes a core proceeding, over which this Court has subject matter jurisdiction. *See* 28 U.S.C. § 157(b)(2)(I).

The Plaintiff filed its complaint on September 3, 2004. The Debtor filed no responsive pleading. On April 5, 2005, the Plaintiff filed the instant motion for judgment on the pleadings, essentially asserting that Plaintiff is entitled to judgment because the Debtor failed to file an answer.

In order to enter a judgment against a defendant, the Court must first find that the

defendant has been properly served. To perfect service, the Plaintiff must serve the defendant/debtor with a copy of the complaint and summons by first class mail or by another method prescribed. See FED. R. BANKR. P. 7004(b)(9). Perfection of service upon the Debtor is required before this Court can adjudicate the Debtor's rights. See *Combs v. Nick Garin Trucking*, 825 F.2d 437, 442 (D.C. Cir. 1987). Without evidence that the defendant has been served properly, any *in personam* judgment entered against the defendant is void. See *Attwell v. LaSalle Nat'l Bank*, 607 F.2d 1157, 1159 (5th Cir. 1979).

According to the certificate of service filed by the Plaintiff, the Plaintiff did not serve the Debtor personally. Service upon the Debtor's attorney is not sufficient to initiate an adversary proceeding. Additionally, the Debtor has filed a request seeking to have the entry of default vacated and has filed an answer to the Plaintiff's Complaint. Because service was not properly perfected and the Debtor has now filed a responsive pleading, the Court will grant the Debtor's request.

The Plaintiff's Motion for Judgment on the Pleadings is hereby **DENIED**. The Debtor's Motion to Reopen Default is hereby **GRANTED**. The Debtor's Answer shall be considered to have been timely filed.

**IT IS SO ORDERED.**

At Newnan Georgia, this 20 day of April, 2005.



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W. HOMER DRAKE, JR.  
UNITED STATES BANKRUPTCY JUDGE