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UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

_____| |
IN RE: CASE NO. 02-81940
Inline Orthodontics, LLC,
CHAPTER 7
Debtor. JUDGE MASSEY
_____| |

Neil C. Gordon, Trustee,
Plaintiff,
v. ADVERSARY NO. 04-6631
Viran Toor,
Defendant.
_____| |

ORDER DENYING MOTION FOR DEFAULT JUDGMENT

In this adversary proceeding, Plaintiff seeks a judgment against Defendant Viran Toor avoiding an alleged transfer from the Debtor as preferential and permitting Plaintiff to recover the amount of the alleged preference from Defendant. Plaintiff moves for a default judgment, and the Clerk has made an entry of default indicating that Defendant has not filed an answer or other response to the complaint. Plaintiff served Defendant with process by the U.S. Mail.

The amount in controversy is only \$4,512.62. Given the relatively small amount of the claim, the filing of this adversary proceeding was probably an error of business judgment on the part of the Trustee. The cost of obtaining and collecting a judgment against Defendant is likely to be more than the recovery since Plaintiff employed his own law firm with offices only in the

United States on an hourly rate basis (subject to allowance by the Court) to prosecute the claim. In any event, the Trustee is off to a bad start because his method of service of process was insufficient to give the Court personal jurisdiction over Defendant.

According to the certificate of service of process filed by Plaintiff, Mr. Toor resides in Canada, not the United States, and Plaintiff served Defendant by U.S. Mail at an address in Ontario, Canada. But under Fed. R. Bank. P. 7001(b) and (d), service may be made by mail only within the United States. *In re All American of Ashburn, Inc.*, 78 B.R. 355, 356 (Bankr. N.D.Ga. 1987) (“... Bankruptcy Rule 7004(b) only authorizes service by mail *within the United States.*”); *In re Crown Hotels (Washington) Corp.*, 188 B.R. 1, 3 (Bankr. D.Dist.Col. 1995). Hence, the Court lacks personal jurisdiction over Defendant Toor.

The Court expresses no opinion on whether it could obtain personal jurisdiction over Defendant if he were served personally in Canada in accordance with Canadian law or the Hague Convention. See Fed. R. Civ. P. 4(k)(2); *In re Paques, Inc.*, 277 B.R. 615, 638 (Bankr. E.D.Pa. 2000). But even if the service of process were done in a sufficient manner, there remains still another potential problem. The complaint fails to allege any contact of Defendant with the United States, other than his receipt of the alleged preferences. Such an attenuated contact probably would not be sufficient under the Constitution to support in personam jurisdiction in a federal or state court.

The constitutional touchstone of due process analysis is "whether the defendant purposefully established 'minimum contacts' in the forum." *Burger King Corp.*, 471 U.S. at 474, 105 S.Ct. 2174. "[T]he foreseeability that is critical to due process analysis ... is that the defendant's conduct and connection with the forum ... are such that he should reasonably anticipate being haled into court there." *Id.* (quoting *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295, 100 S.Ct. 559, 62 L.Ed.2d 490 (1980)). "It is essential in each case that there be some act by which the defendant purposely avails itself

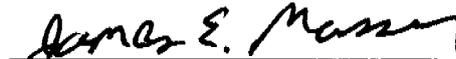
of the privilege of conducting activities within the forum ..., thus invoking the benefits and protections of its laws." *Id.* at 475, 105 S.Ct. 2174 (quoting *Hanson v. Denckla*, 357 U.S. 235, 253, 78 S.Ct. 1228, 2 L.Ed.2d 1283 (1958)). "This 'purposeful availment' requirement ensures that a defendant will not be haled into a jurisdiction solely as a result of 'random,' 'fortuitous,' or 'attenuated' contacts...." *Id.* (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770, 774, 104 S.Ct. 1473, 79 L.Ed.2d 790 (1984)).

BP Chemicals Ltd. v. Formosa Chemical & Fibre Corp., 229 F.3d 254, 259 (3rd Cir. 2000).

For these reasons, it is

ORDERED that Plaintiff's motion for a default judgment is DENIED.

Dated: August 30, 2005.



JAMES E. MASSEY
U.S. BANKRUPTCY JUDGE