



IT IS ORDERED as set forth below:

Date: March 10, 2009

James E. Massey

James E. Massey
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

IN RE:

CASE NO. 07-77734

Jennifer Lynn Huhn,

CHAPTER 7

Debtor.

JUDGE MASSEY

Barbara B. Stalzer, Trustee,

Plaintiff,

v.

ADVERSARY NO. 08-6533

Tom Martin and Judy Martin,

Defendants.

ORDER VACATING CLERK'S ENTRY OF DEFAULT
AND DENYING MOTION FOR DEFAULT JUDGMENT

On January 6, 2009, the Clerk made an entry of default because the docket showed that no answer or other response to the complaint had been filed. This was an error because Defendant Tom Martin had in fact responded to the complaint, which the Clerk received on October 29,

2008 and mistakenly returned to him. On January 5, 2009, Plaintiff moved for a default judgment.

The Court held a status hearing in this adversary proceeding on February 12, 2009 at which both Plaintiff and Defendants appeared. At that time, there was no dispute that Mr. Martin had in fact submitted a timely answer to the Clerk.

As to Mrs. Martin, the certificate of service of the summons and complaint, filed on September 29, 2008, shows that those documents were mailed in one envelope to:

Mr. Tom Martin
Mrs. Judy Martin
454 Beach Drive
Hendersonville, NC 38792.

Service was effective on Mr. Martin, but not on Mrs. Martin. Bankruptcy Rule 7004(b)(1) permits service by mail “upon **an** individual by mailing a copy of the summons and complaint to **the** individual’s dwelling house or usual place of abode” (Emphasis added.) Although it is perhaps a close question, the Court believes that the Rule and due process require that each defendant is entitled to his or her own copy of the summons and complaint. The Court holds that Mrs. Martin was not “the” individual served by mail in an envelope addressed first to Mr. Martin. Plaintiff will have to obtain a new summons and re-serve it and the complaint on Mrs. Martin if she wishes to pursue a judgment against her.

The Court reiterates its suggestions at the February 12 status conference that the Martins should consult an attorney familiar with bankruptcy law and that both sides should consider settling this proceeding if at all possible.

For these reasons, the Clerk’s entry of default is vacated, and Plaintiff’s motion for a default judgment is DENIED.

END OF ORDER