



IT IS ORDERED as set forth below:

Date: October 31, 2011

Mary Grace Diehl

**Mary Grace Diehl
U.S. Bankruptcy Court Judge**

**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

| | | |
|------------------------------------------|---|----------------------|
| IN RE: | : | CHAPTER 13 |
| | : | |
| BERENICE W. REID, | : | BANKRUPTCY CASE |
| | : | NO. 11-61073-MGD |
| Debtor. | : | |
| | : | |
| AMERIFIRST HOME IMPROVEMENT : | : | |
| FINANCE CO., | : | ADVERSARY PROCEEDING |
| | : | 11-5397 |
| Plaintiff, | : | |
| | : | |
| v. | : | |
| | : | |
| BERENICE W. REID and WELLS : | : | |
| FARGO BANK N.A., as Trustee for The : | : | |
| Holders of the First Franklin Mortgage : | : | |
| Loan Trust, Mortgage Loan Asset Backed: | : | |
| Certificates, Series 2008-FFHI, | : | |
| | : | |
| Defendants. | : | |

**ORDER GRANTING IN PART AND DENYING IN PART
PLAINTIFF'S REQUEST FOR ENTRY OF DEFAULT JUDGMENT**

This case is before the Court on Amerifirst Home Improvement Finance Co.'s ("Plaintiff") Motion for Entry of Default. (Docket No. 8). Plaintiff commenced the underlying adversary proceeding against Defendants on July 26, 2011, seeking a determination of the validity, priority, and extent of Plaintiff's lien on Debtor's real property. According to the certificate of service, the summons and complaint were served by first class mail on (1) Debtor's counsel, Kimberly Rayborn of Clark & Washington, P.C., (2) Debtor, and (3) "Andrew Shuping, Esq., Shuping, Morse & Ross, LLP, 6529 Riverdale Road, Ste 100, Riverdale, GA 30274-1614" on July 26, 2011.

Entry of default against Defendant Wells Fargo Bank N.A. is improper because Plaintiff did not properly effectuate service of process on Wells Fargo Bank N.A., an insured depository institute. Rule 7004(h) of the Federal Rules of Bankruptcy Procedure instructs that service of process on an insured depository institution is effected by "certified mail addressed to an officer of the institution." FED. R. BANKR. P. 7004(h). Rule 7004(h) also provides exceptions to this general rule in subsections (1) through (3). These exceptions are not applicable to this proceeding. *E.g., In re Fisher*, 2008 Bankr. LEXIS 2467 (Bankr. N.D. Ala. Sept. 12, 2008) (service of process on proof of claim filer is insufficient to meet Rule 7004(h)'s service requirement).

"Perfection of service of process results in this [Court] obtaining jurisdiction over parties such that it can adjudicate their rights." *Ga. Lottery Corp. v. Hunt (In re Hunt)*, 2010 Bankr. LEXIS 762 (Bankr. N.D. Ga. Feb. 24, 2010) (citing *Combs v. Nick Garin Trucking*, 825 F.2d 437, 442, 263 U.S. App. D.C. 300 (D.C. Cir. 1987) (citation omitted); *Fed. Trade Comm'n v. Compagnie de Saint-Gobain-Pont-A-Mousson*, 636 F.2d 1300, 1319, 205 U.S. App. D.C. 172 (D.C. Cir. 1980)). Without proper service, the Court cannot enter default Defendant Wells Fargo Bank N.A.

It seems Plaintiff has properly effectuated service as to Debtor-Defendant Berenice W. Reid

under Rule 7004(b)(9), and entry of default judgment is appropriate as to Ms. Reid. However, the determination sought by Plaintiff cannot be obtained by merely securing a judgment against Debtor. Accordingly, it is

ORDERED that the Plaintiff's request for entry of default judgment against Defendant Wells Fargo Bank N.A. is hereby **DENIED**.

It is **FURTHER ORDERED** that Plaintiff's request for entry of default judgment against Debtor-Defendant Berenice W. Reid is hereby **GRANTED**.

It is **FURTHER ORDERED** that Plaintiff shall have fourteen (14) days from entry of this Order to properly serve Defendant Wells Fargo Bank N.A. with a valid summons and complaint to avoid dismissal of this action without further notice.

The Clerk is directed to serve a copy of this Order upon Plaintiff, Plaintiff's counsel, Defendants, and Defendants' counsel.

END OF DOCUMENT