

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

IN RE:	)	CHAPTER 7
	)	
JULIE ANN THOMPSON,	)	CASE NO. 11-78158 - MHM
	)	
Debtor.	)	
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SEAN THOMPSON,	)	
	)	
Plaintiff,	)	
v.	)	ADVERSARY PROCEEDING
	)	NO. 11-5667
JULIE ANN THOMPSON,	)	
	)	
Defendant.	)	

**ORDER DENYING REQUEST FOR ENTRY OF DEFAULT**

On April 27, 2012, Plaintiff filed a response (Doc. No. 13-23) (the “Response”),<sup>1</sup> to the order entered April 19, 2012 (Doc. No. 11)(the “Order”). The facts upon which the Order was based need not be repeated here. The Response attempts to explain and cure the deficiencies catalogued in the Order, but fails to accomplish either purpose.

Plaintiff asserts “debtor’s issue of default” is somehow unnecessary because of Debtor’s alleged consent “in open court” to certain terms set forth in Doc. No. 16, which is an uncertified copy of a handwritten order purportedly signed and entered in Fulton

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<sup>1</sup> Docs. No. 16 through 29 are labeled exhibits and should more properly have been filed as part of the document, presumably Plaintiff’s response, that referenced those exhibits. Docs. No. 20 and 21 were filed with white print on a black background, which is an unacceptable format for electronically filed documents.

Superior Court. That order does not recite that Debtor consented to the terms set forth in the order, however. Additionally, although the bankruptcy court has exclusive jurisdiction to determine the dischargeability of certain debts resulting from false financial statements, fraud, embezzlement, larceny or willful and malicious injury by a debtor, 11 U.S.C. §523(c), state courts have concurrent jurisdiction to determine the dischargeability of other potentially nondischargeable debts, including debts in the nature of alimony, maintenance, or support. *Cummings v. Cummings*, 244 F. 3d 1263 (11<sup>th</sup> Cir. 2001); *Eden v. Robert A Chapski, Ltd.*, 405 F. 3d 582 (7<sup>th</sup> Cir. 2005). Therefore, the state court can determine that Debtor's obligation is nondischargeable.

The state court order, however, directed Debtor's bankruptcy attorney<sup>2</sup> "to prepare whatever documentation is necessary to ensure that the loan which [Plaintiff] has given [Debtor] is not discharged in bankruptcy." Review of Debtor's Schedule F filed in the main bankruptcy case October 13, 2011, shows that Debtor and Debtor's attorney appear to have failed to comply with the Fulton Superior Court's order. Plaintiff has apparently attempted to accomplish the underlying purpose of the state court order by filing this adversary proceeding and seeking a default judgment.<sup>3</sup> Although that course of action, if done correctly, may have accomplished Plaintiff's goal, the same purpose could have been accomplished by returning to the state court.

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<sup>2</sup> Although no attorney has appeared for Defendant in this adversary proceeding, Debtor is represented by an attorney in the main bankruptcy case.


<sup>3</sup> Debtor and Debtor's attorney could comply with the state court's order by simply agreeing to entry of an order in this adversary proceeding that the debt described in the complaint and in the state court order is nondischargeable.

Plaintiff has failed to satisfy the procedural prerequisites to obtaining such a default judgment, the most important of which is establishing that Debtor and Debtor's attorney were properly served with the complaint **and** summons. If Plaintiff fails to serve the summons within 14 days of issuance of the summons, Plaintiff must obtain reissued summons. Bankruptcy Rule 7004(e). As set forth in the Order, Plaintiff failed to establish that Debtor **and** Debtor's attorney were timely served with the complaint and summons. An amended certificate of service filed April 29, 2012, states Debtor and Debtor's attorney were served with a copy of the "Voluntary Petition case" November 17, 2011. Counsel's affidavit avers that the amended complaint and the summons issued November 20, 2011, was mailed to Debtor and Debtor's attorney November 28, 2011 "to the best of her knowledge." No certificate of service was attached to the amended complaint and no certificate of service was filed at or near the time the amended complaint was filed. As a matter of constitutional due process, "to the best of my knowledge" is insufficient to establish proper service. The duty is Plaintiff's - in this case, his counsel's. A copy of the complaint and summons served by hand on Debtor in open court December 21, 2011, is not timely service. The certificate of service filed April 29, 2012 (Doc. No. 23), shows service of the amended complaint but not the summons on December 2, 2011. Accordingly, it is hereby

**ORDERED** that this adversary proceeding is dismissed without prejudice; provided, however, that this adversary proceeding shall remain open for a period of 60 days to allow Plaintiff to obtain and file in this adversary proceeding a stipulation by Debtor that Plaintiff's claim is nondischargeable.

**The Clerk, U.S. Bankruptcy Court, is directed to serve a copy of this order**  
upon Plaintiff's attorney, Defendant's attorney, and the Chapter 7 Trustee.

IT IS SO ORDERED, this the 18<sup>th</sup> day of September, 2012.

  
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MARGARET H. MURPHY  
UNITED STATES BANKRUPTCY JUDGE