



**IT IS ORDERED as set forth below:**

**Date: September 28, 2012**

*Mary Grace Diehl*

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

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

In re:	:	Case No. 11-44317-MGD
	:	
<b>ALAN D. ARCHER,</b>	:	Chapter 7
	:	
Debtor.	:	Judge Diehl
	:	
<b>ALAN D. ARCHER,</b>	:	
	:	Adversary Proceeding
Plaintiff.	:	
	:	No. 12-4055-MGD
v.	:	
	:	
<b>AMERICA'S SERVICING COMPANY</b>	:	
<b>AS SERVICER FOR HSBC BANK USA,</b>	:	
<b>NATIONAL ASSOCIATION, AS</b>	:	
<b>TRUSTEE FOR LUMINENT</b>	:	
<b>MORTGAGE TRUST 2007-2, AND</b>	:	
<b>SHAPIRO &amp; SWERTGEGER, LLP,</b>	:	
	:	
Defendants.	:	

**ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS**

This adversary proceeding is before the Court on the Motion to Dismiss filed by Wells Fargo

Bank, N.A., d/b/a America's Servicing Company as servicer for HSBC Bank USA, National Association, as Trustee for Luminent Mortgage Trust 2007-2 ("Wells Fargo") and the Motion to Dismiss filed by Shapiro & Swertfeger, LLP ("S&S") (collectively, "Defendants"). (Doc. Nos. 3, 5).

Alan D. Archer ("Plaintiff") initiated this adversary proceeding on July 13, 2012 (Plaintiff's Complaint). (Doc. No. 1). On August 13, 2012, both Wells Fargo and S&S filed their Motions to Dismiss, alleging, among other things, insufficient service of process under F.R.B.P. 12(b)(5) (collectively, "Defendants' Motions"). Plaintiff filed a response to Defendants' Motions on August 27, 2012. (Doc. No. 7)

Plaintiff's Complaint alleges facts relating to his home mortgage, disputing that Defendants own this debt. In addition to disputing ownership of the debt, Plaintiff asserts additional claims for relief including unclean hands, breach of the duty of good faith and fair dealing, and that the debt is unsecured and dischargeable. The Court need not address any of these substantive issues because as explained herein, Plaintiff's Complaint fails under F.R.B.P. 7012(b)(5) for insufficient service of process.

In an adversary proceeding, a plaintiff must serve on a defendant the summons, along with a copy of the complaint, and file proof of service of the same, in accordance with the Federal Rules of Bankruptcy Procedure. This service must be made within fourteen days after the issuance of the summons. F.R.B.P. 7004(e). Under F.R.B.P. 7004(b), service on a partnership must be mailed to the attention of an officer, managing or general agent, or other agent authorized by law to receive service of process. On July 13, 2012, the Clerk issued the Summons. (Doc. No. 2). On August 27, 2012, Plaintiff filed a certificate of service indicating that service was made on August 13, 2012 on

“Philip Hasty, Shapiro & Swertfeger, 2872 Woodcock Blvd., Ste. 100, Atlanta, GA 30341.” (Doc. No. 8). This attempt at service was insufficient because it was outside the allowed fourteen-day period. Additionally, the certificate of service does not indicate whether Philip Hasty is an officer, managing or general agent, or other agent authorized by law to receive service of process; however, it is unnecessary for the court to make this determination as service was untimely.

Plaintiff asserts that S&S was the attorney for Wells Fargo in other dealings with Plaintiff outside this proceeding, and therefore the attempted service on S&S was sufficient to serve Wells Fargo. As explained above, service on S&S was untimely, so Plaintiff’s assertion fails on this basis. Even if service on S&S had been timely, it would not have constituted sufficient service on Wells Fargo. Under Rule 7004(h), service of process on an insured depository institution must be made by certified mail addressed to an officer of the institution. An alternative method of service is required under 7004(h)(1) where an attorney has appeared for the institution, and in such case, the attorney must be served by first class mail. Wells Fargo is an FDIC insured depository institution, therefore, 7004(h) service is required. S&S has not appeared for Wells Fargo in either the bankruptcy or adversary proceeding, therefore 7004(h)(1) does not apply. Service on S&S was not sufficient to serve Wells Fargo in this proceeding.

As a result of the insufficient service of process on Defendants, the Court does not have personal jurisdiction over them. Plaintiff’s Complaint is subject to dismissal on these grounds. However, as the Court noted at the hearing on May 9, 2012 on the Motion for Relief from Stay filed in the bankruptcy proceeding, the Court’s ruling on that Motion as in the Motions now before the Court, does nothing to prevent Plaintiff from pursuing his rights in the property in another forum (Doc. No. 25, Case No. 11-44317). Defendant’s Motion should be granted on the basis of improper

service of process. Accordingly, it is

**ORDERED** that the Motion to Dismiss filed by Wells Fargo Bank, N.A., d/b/a America's Servicing Company as servicer for HSBC Bank USA, National Association, as Trustee for Luminant Mortgage Trust 2007-2 is **GRANTED** and the Motion to Dismiss filed by Shapiro & Swertfeger, LLP is **GRANTED**.

The Clerk of Court shall serve a copy of this order on Plaintiff and Defendants.

**END OF DOCUMENT**