

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

FILED ON DOCKET
AUG 12 2008

IN RE:	:	CASE NO. 07-63407
	:	
EDWARD W. FARLEY	:	
	:	
Debtor.	:	
_____:	:	
	:	
EUGENE T. HORN, ROY BARUDIN,	:	CHAPTER 7
MALCOLM AND DALE BARUDIN	:	
DANIEL SCHWARTZ, DANIEL	:	
SCHWARTZ TRUST, BARBARA	:	
SCHWARTZ TRUST, JOHNNA LODGE :	:	
ROBERT KONET	:	
	:	
Plaintiffs,	:	ADVERSARY PROCEEDING
	:	NO. 07-6312-JB
v.	:	
	:	
EDWARD W. FARLEY	:	
	:	
Defendant.	:	

ORDER

This adversary proceeding objecting to the dischargeability of plaintiffs' claims is before the Court on plaintiffs' request for entry of default and plaintiffs' motion for default judgment, both filed on July 30, 2008. (Docket No. 18 and 19). This Court has jurisdiction pursuant to 28 U.S.C. §§ 157(b) and 1334, and this is a core proceeding under 28 U.S.C. § 157(b)(2)(I).

Plaintiffs' counsel self-scheduled the motion for default judgment for hearing on September 17, 2008. However, after reviewing the documents filed by the plaintiffs, the Court concludes that the request for entry of default and motion for default judgment cannot be granted at this time. First, plaintiffs' service of the request for entry of default is insufficient. The certificate of service attached to the request for entry of default shows service on defendant,

Edward Farley, at 360 Mulberry Oaks, Dacula, Georgia, 30019. This is not the correct address for the debtor. In fact, this is the same incorrect address that counsel provided on plaintiffs' first request for entry of default in this case filed on September 25, 2007, which could not be entered because of insufficient service. The current docket indicates two separate addresses for the defendant, 3160 Mulberry Oaks Court, Dacula, Georgia, 30019, and 1026 Patina Point, Peachtree City, Georgia, 30269. Service of plaintiffs' request for entry of default and motion for default judgment should be served at both addresses.

In addition to problems regarding service, not all of the relief requested by the plaintiffs can be granted. Plaintiffs have requested a default judgment under 11 U.S.C. §§ 523(a)(2), (a)(4), and (a)(6). While the amended complaint alleges a claim under §523(a)(2) with sums certain owing to each plaintiff, the amended complaint does not allege the elements of a claim under §§ 523(a)(4) or (a)(6). Thus, the Court cannot grant a default judgment as prayed for in the motion. Finally, as noted by plaintiffs' counsel at the December 12, 2007 status conference, a money judgment on punitive damages cannot be granted without a trial.

Plaintiffs have twenty (20) days to perfect service and to amend the motion for default judgment so that the relief prayed for complies with Rule 55 of the Bankruptcy Rules which incorporates Fed. R. Civ. P. 55(b)(1).

IT IS SO ORDERED, this 11th day of August, 2008.


JOYCE BIHARY
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF MAILING

A copy of the foregoing Order was mailed to the following:

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Scott B. Riddle
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Stephanie A. Mayberry
Judicial Assistant for
Chief Judge Bihary

Mailed: 08/11/08