



IT IS ORDERED as set forth below:

Date: January 14, 2015

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

In Re:

Chapter 7

ANISSA BOYD WALKER,

Case No. 14-61060-MGD

Debtor.

Judge Mary Grace Diehl

ANISSA BOYD WALKER,

Plaintiff,

v.

Adversary Proceeding No.
14-5373

**U.S. BANK NATIONAL ASSOCIATION,
AS TRUSTEE FOR SECURITIZED
ASSET BACKED RECEIVABLE LLC
TRUST 2006-NC1,**

Defendant.

ORDER DISMISSING ADVERSARY PROCEEDING

Anissa Boyd Walker, *pro se* Debtor, filed this adversary proceeding to challenge the validity of a pre-petition foreclosure sale of certain residential real property. Debtor seeks a

declaratory judgment that U.S. Bank National Association, as Trustee (“Defendant”) was not the proper party to foreclose on the property. Debtor also seeks general injunctive relief.

Defendant has moved to dismiss this adversary proceeding under Federal Rules of Civil Procedure 12(b)(2) and (5), made applicable to this proceeding by Federal Rule of Bankruptcy Procedure 7012. Defendant asserts that the Court lacks personal jurisdiction over it and that Debtor failed to sufficiently serve process on it. Debtor did not oppose or otherwise respond to Defendant’s motion.

The Court does not have personal jurisdiction over Defendant in this adversary proceeding because it was not properly served with process under Federal Rule of Bankruptcy Procedure 7004(h). *See Omni Capital Int’l, Ltd. v. Rudolf Wolff & Co., Ltd.*, 484 U.S. 97, 104, 108 S. Ct. 404, 409, 98 L. Ed. 2d 415 (1987) *citing Mississippi Publishing Corp. v. Murphree*, 326 U.S. 438, 444–445, 66 S.Ct. 242, 245–246, 90 L.Ed. 185 (1946). Defendant is an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act, and 7004(h) requires that service on an insured depository institution “shall be made by certified mail addressed to an officer of the institution unless—(1) the institution has appeared by its attorney, in which case the attorney shall be served by first-class mail; (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first-class mail sent to an officer of the institution designated by the institution; or (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.” FED. R. BANKR. P. 7004(h).

A Rule 12(b)(5) motion challenging sufficiency of service “must be specific and must point out in what manner the plaintiff has failed to satisfy the requirements of the service provision utilized.” *Moore v. McCalla Raymer, LLC*, 916 F. Supp. 2d 1332, 1339 (N.D. Ga. 2013).

Defendant has satisfied this burden. Debtor's attempted service of process on the law firm that represented Defendant in her underlying Chapter 7 case for the purpose of seeking relief from stay is not considered an attorney that has appeared for Defendant in this proceeding under Rule 7004(h)(1). *See U.S. v. Ziegler Bolt and Parts Co.*, 111 F.3d 878, 881 (Fed. Cir. 1997) (The mere relationship between a litigant and its attorney is not sufficient to convey authority to accept service). "[A] party must strictly comply with Bankruptcy Rule 7004(h) in effectuating service of process on an insured depository institution." *PNC Mortgage v. Rhiel*, 2011 WL 1043949, at *5 (S.D. Ohio Mar. 18, 2011) (holding that the bank's actual notice of the adversary proceeding does not cure the defect in service). Here, because none of the three statutory exceptions in Rule 7004(h) applies, Debtor has failed to properly serve process on Defendant because she has not served Defendant by certified mail addressed to an officer of the institution.

Accordingly, it is **ORDERED** that the above styled adversary proceeding is **DISMISSED** for insufficient service of process and lack of personal jurisdiction over Defendant.

The Clerk's Office is directed to serve a copy of this Order on Debtor and the party listed below.

END OF DOCUMENT

Distribution List

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