



IT IS ORDERED as set forth below:

Date: November 12, 2015

Mary Grace Diehl

Mary Grace Diehl
U.S. Bankruptcy Court Judge

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

In re:	:	BANKRUPTCY CASE NO:
	:	
CAROLYN DARLENE MATTIS,	:	15-59082-MGD
	:	
Debtor.	:	CHAPTER 7
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ANGIE GUY,	:	
	:	
Plaintiff,	:	
	:	
v.	:	ADVERSARY PROCEEDING NO:
	:	
CAROLYN DARLENE MATTIS,	:	15-5340
	:	
Defendant.	:	
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**ORDER DENYING PLAINTIFF’S MOTION FOR ENTRY OF DEFAULT JUDGMENT
AND NOTICE OF STATUS CONFERENCE**

Plaintiff Angie Guy filed a motion entitled “Requesting a Judgement Default in the Adversary Proceeding No. 15-5340” on October 7, 2015 (Doc. 3). Ms. Guy initiated this dischargeability action against Debtor Carolyn Darlene Mattis seeking to deny Ms. Mattis her

discharge under section 727 or to have Ms. Guy's debt deemed nondischargeable under section 523. For the following two reasons, the Court denies Ms. Guy's motion for default judgment, and instead sets this matter for a status conference at **December 14, 2015 at 10:45 a.m.**

First, Ms. Guy failed to file a Certificate of Service of summons and complaint including "the name and address of all persons and parties served." Local Rule 7005-1, BLR. Without a Certificate of Service, the Court is unable to determine whether the Debtor, Ms. Mattis, was actually served with a copy of the complaint and summons. Because service of process is necessary for the Court to have jurisdiction over a defendant, the Court cannot enter judgment against a defendant without proof of service. Fed. R. Bankr. P. 7004(f). A form Certificate of Service is available on the Court's website at <http://www.ganb.uscourts.gov/file/1366>.

The second issue with Ms. Guy's motion relates to the first. Before the Court can enter default judgment, the Clerk must first enter must enter a party's default. The Clerk must enter default "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise." Fed. R. Bankr. P. 7055 (applying Fed. R. Civ. P. 55(a)). Because Ms. Guy has not filed proof of service of the summons and complaint, however, the Clerk cannot enter Ms. Mattis's default. Before the Court can enter default judgment against Ms. Mattis, Ms. Guy would need to (a) prove service on Ms. Mattis, (b) show by affidavit or otherwise that Ms. Mattis failed to plead or otherwise defend against this action, and (c) after the Clerk enters default, move for default judgment.

However, the Court notes that Ms. Mattis has since appeared through counsel and filed an Answer on October 14, 2015. (Doc. 4). While the deadline for filing the Answer given by the Summons was October 1, 2015, without a filed Certificate of Service, the Court cannot be sure

that the Summons was actually served within the required 7 days. Fed. R. Bankr. P. 7004(e). Accordingly, the Court will deem the answer to have been timely filed on October 14, 2015. For the above reasons, it is

ORDERED that Plaintiff's Motion for Entry of Default Judgment is **DENIED**.

It is **FURTHER ORDERED** and **NOTICE IS HEREBY GIVEN** that a status conference in the above-styled adversary proceeding will be held before the Court on **December 14, 2015 at 10:45 a.m.** in Courtroom 1201, United States Courthouse, Richard B. Russell Federal Building, 75 Ted Turner Drive, Atlanta, Georgia 30303.

The Clerk is directed to serve a copy of this Order upon Plaintiff, Defendant, and Counsel for Defendant.

END OF DOCUMENT