

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
POUGHKEEPSIE DIVISION

**FOR PUBLICATION
ON ELECTRONIC
DATABASE ONLY**

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In re:

WILLIAM B. SQUIRES,

Debtor.

Case No.: 01-36476

Chapter 7

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DEBORAH A. SQUIRES,

Plaintiff,

Adversary Proc. No. 01-7017

-against-

WILLIAM B. SQUIRES,

Defendant.

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ORDER

Default was entered by the Clerk of Court against defendant William B. Squires on February 27, 2002. Now comes plaintiff, by motion for default judgment.

Plaintiff's complaint seeks a determination that a debt arising from defendant's obligation on a promissory note dated December 19, 2000 is non-dischargeable pursuant to 11 U.S.C. 523(a)(5). Plaintiff now brings a motion for default judgment. Plaintiff's request, is hereby DENIED, in all respects, and as follows:

1.) Plaintiff brought the motion for default judgment by notice of presentment. This is an acceptable practice pursuant to the local rules of the Southern District of New York. See S.D.N.Y. LBR 9074-1(c)(1)(D). The party proceeding by notice of presentment is not however relieved of the basic requirement to file an affidavit of service. An affidavit of service was not filed with the plaintiff's motion for default judgment.

The notice of presentment is however addressed for mailing to the defendant and his attorney, but the address for the defendant is incorrect. Had plaintiff's attorney, the law firm of Maynard, O'Connor, Smith & Catalinotto, LLP, ("MOSC"), checked the debtor's bankruptcy case docket they would have noticed that on August 2, 2001, more than a month before MOSC filed the instant adversary proceeding, the debtor filed a change of address. As a result, MOSC served the Summons, Complaint, Rule 7055 Affidavit, and (giving them the benefit of the doubt that service was actually attempted) the Motion for Default Judgment at debtor's former address: 21 Fiero Road, Saugerties, New York 12477; instead of debtor's address as found on the bankruptcy case docket at entry #3: 6337 Myrtle Grove Road, Wilmington, North Carolina 28409. This Court therefore finds that service of the motion for default judgment by plaintiff on the defendant was defective. Furthermore, it appears to this Court that service of process may have been defective as well. See Federal Rule of Bankruptcy Procedure 7004(b)(9).

2.) A duly scheduled damages inquest was to be held this date upon the Court's request. Plaintiff failed to appear because MOSC by letter dated July 8, 2002, notified this Court that it did "not have an attorney available" to appear at the inquest. The damages inquest had been adjourned on two (2) prior occasions pursuant to MOSC's request. MOSC further stated in its July 8th letter to this Court that it intended to "rest on the papers previously submitted in support of [it's] motion for default judgment;" however, if these papers were sufficient to support plaintiff's request for damages absent a hearing, then a hearing would not have been scheduled in the first place. Nonetheless, the damages inquest is hereby deemed moot because of the service defects outlined in the previous paragraph.

For the reasons stated above, this Court denies the Motion for Default Judgment in its entirety. A pre-trial conference is hereby scheduled for September 4, 2002 at 11:30 a.m.

Dated: Poughkeepsie, New York
July 9, 2002

SO ORDERED,

/s/Cecelia G. Morris
CECELIA G. MORRIS
UNITED STATES BANKRUPTCY JUDGE

NOTICE BY MAIL TO:

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