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IT IS SO ORDERED.



John E. Hoffman, Jr.  
United States Bankruptcy Judge

Dated: April 9, 2024

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION

*In re:* : Case No. 20-53767  
: :  
Candice Muncy, : Chapter 13  
: :  
*Debtor.* : Judge Hoffman

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Candice Muncy, :  
: :  
*Plaintiff,* :  
: :  
v. : Adv. Pro. No. 23-2058  
: :  
Financial Service Centers of Ohio, LLC, :  
: :  
*Defendant.* :

**ORDER (A) DENYING REQUESTS FOR ENTRY OF DEFAULT AND  
(B) DIRECTING THE PLAINTIFF TO PROPERLY SERVE  
SUMMONS AND COMPLAINT AND FILE PROOF OF SERVICE OR  
FACE DISMISSAL OF THE ADVERSARY PROCEEDING**

Candice Muncy (“Muncy”) initiated this adversary proceeding by filing a complaint (“Complaint”) (Doc. 1) against Financial Service Centers of Ohio, LLC (“Financial”). She now seeks the entry of a default under Rule 55(a) of the Federal Rules of Civil Procedure (“Civil

Rule(s)"). See Doc. 14 (entitled "Application for Entry of Default"); Docs. 15 & 18 (entitled "Affidavit for Entry of Default by Clerk Pursuant to F.R. Civ. P. 55(a)") (together, "Affidavits").

Civil Rule 55(a), made applicable here by Rule 7055 of the Federal Rules of Bankruptcy Procedure ("Bankruptcy Rule(s)"), provides that "[w]hen a party against whom a default judgment . . . is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default." Thus, entering a default is typically a ministerial task for the Clerk of the Court ("Clerk"). But "[p]roper service is a prerequisite to entry of default." *Glover v. Tenn. Bd. of Regents*, No. GJH-19-583, 2019 WL 13255543, at \*1 (D. Md. Dec. 4, 2019). And courts themselves have rightly denied requests for an entry of default where a plaintiff failed to properly serve the summons and complaint on the defendant. See *Pompy v. Monroe Bank & Tr.*, No. 19-10334, 2020 WL 13133421, at \*1 (E.D. Mich. Jan. 14, 2020); *Vazquez v. Uooligan Gas Station Convenience Store Inc.*, No. 2:18-CV-611-FTM-38CM, 2018 WL 6629922, at \*3 (M.D. Fla. Dec. 19, 2018); *Kelly v. Wilson*, No. 09-2188-KHV, 2009 WL 3122519, at \*1 (D. Kan. Sept. 29, 2009); see also *Adams v. Wilmington Fin./AIG*, No. 12-cv-10308, 2012 WL 2906114, at \*2 (E.D. Mich. Apr. 13, 2012) (setting aside clerk's entry of default because "to the extent there is no evidence that any of the above-named defendants have been properly served, this court maintains no jurisdiction over them and thus no default or default judgment can be entered against them").

Bankruptcy Rule 7004 governs service in adversary proceedings, providing that an entity such as Financial may be served by mailing a copy of a summons and the Complaint to either (1) the defendant directly to "the attention of an officer [or] a managing or general agent" or (2) "any other agent authorized by appointment or by law to receive service of process" (*i.e.*, a registered agent). Fed. R. Bankr. P. 7004(b)(3). Muncy mailed copies of the summons and the

Complaint to Financial directly, *see* Certificate of Service (Doc. 9) at 1, but she failed to do so to the attention of an officer or a managing or general agent, making that service improper. *See Smith v. Vista Hill Partners (In re Smith)*, 510 B.R. 164, 166 (Bankr. S.D. Ohio 2014).

Muncy also tried to effectuate service through Financial's registered agent. In seeking an entry of a default against Financial, Muncy relies on the service "as evidenced by Certificate of Service (Doc. 13)." Affs. at 1. That certificate states that Muncy served the summons and the Complaint via first class mail to "INCorp SERVICES INC, AGENT FOR FINANCIAL SERVICES OF OHIO, 9435 WATERSTONE BLVD, STE 140, CINCINNATI, OH 45249." According to the Ohio Secretary of State's records, available at <https://businesssearch.ohiosos.gov> (last visited Apr. 5, 2024), InCorp Services, Inc. ("InCorp") is the registered agent for Financial. Although Bankruptcy Rule 7004(b)(3) does not expressly mention limited liability companies such as Financial, courts have applied that rule to such companies. *See Mills v. Nationstar (In re Mills)*, No. A14-4012, 2014 WL 1379117, at \*2 (Bankr. D. Neb. Apr. 4, 2014); *Radnor Holdings Corp. v. PPT Consulting, LLC (In re Radnor Holdings Corp.)*, No. 08-51184 (PJW), 2009 WL 64608, at \*1 (Bankr. D. Del. Jan. 9, 2009). So there is no issue with Muncy's having served InCorp as Financial's registered agent, rather than serving Financial directly.

The problem is that the certificate of service at Doc. 13 misnames Financial as "Financial Services of Ohio" rather than "Financial Service Centers of Ohio, LLC." This makes the service insufficient. *See Hercules Concrete Pumping Serv., Inc. v. Bencon Mgmt. & Gen. Contracting Corp.*, 62 S.W.3d 308, 311 (Tex. App. 2001) ("Because of the incomplete name of the corporate entity served, we believe the [service] is insufficient."). Lest there be any doubt regarding the potential for confusion, the Court notes that a search on the Ohio Secretary of State's website for

“Financial Services of Ohio” produces 37 results, while a search for “Financial Service Centers of Ohio, LLC” produces only one—namely, Financial.

After the Clerk alerted Muncy to this problem, she attempted to correct it by filing a new certificate of service (Doc. 21), stating that mail service was effectuated on October 19, 2023 on “INCORP SERVICES INC, AGENT FOR FINANCIAL SERVICE CENTERS OF OHIO, 9435 WATERSTONE BLVD, STE 140, CINCINNATI, OH 45249.” This time, Muncy got Financial’s name right. Although Muncy should have included the “LLC” in Financial’s name, the omission of a corporate designation does not generally make service insufficient. *See Morrel v. Nationwide Mut. Fire Ins. Co.*, 188 F.3d 218, 224 (4th Cir. 1999). Still, there are two problems with this certificate of service. First, it was filed on January 23, 2024—more than three months after service was purportedly made. That calls the certificate’s accuracy into question. *See Wolffe v. Galdenzi*, No. CV 22-5164, 2024 WL 185290, at \*2 n.3 (E.D. Pa. Jan. 17, 2024) (questioning plaintiff’s “concerning habit of submitting after-the-fact ‘certificates of service’”). Second, and more importantly, it is inconsistent with another certificate of service Muncy filed, which stated that she served a summons and the Complaint on October 25, 2023 rather than October 19, 2023. *See* Certificate of Service (Doc. 10) at 1. Given this timing and inconsistency, the Court has no confidence that Muncy properly served Financial with the summons and the Complaint. The Court therefore **DENIES** Muncy’s requests for entry of a default. The Clerk shall not enter a default in this adversary proceeding at this time.

Muncy filed the Complaint on September 19, 2023—more than 90 days ago. Under Civil Rule 4(m), made applicable here by Bankruptcy Rule 7004, “[i]f a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant *or order that service*

*be made within a specified time.*” Civil Rule 4(m) (emphasis added). Rather than dismiss this adversary proceeding, the Court will afford Muncy additional time to serve Financial. It is therefore **ORDERED** that, no later than **May 7, 2024**, Muncy shall (1) mail copies of a summons and the Complaint to Financial in accordance with Bankruptcy Rule 7004, and (2) file proof of service showing that she properly served the summons and the Complaint. Such proof shall consist of a certificate of service **and** a mailing receipt or other equivalent document showing the addressee and the date on which copies of a summons and the Complaint were mailed. Notice is hereby given that the Court will dismiss the Complaint if Muncy fails to timely and properly comply with any of the foregoing requirements.

**IT IS SO ORDERED.**

Copies to:

Robert Goldberger, Esq., Counsel for Candice Muncy

InCorp Services, Inc., Agent for Financial Service Centers of Ohio, LLC  
9435 Waterstone Blvd., Ste. 140, Cincinnati, OH 45249