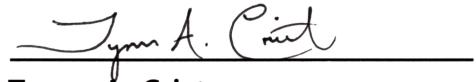


This document has been electronically entered in the records of the United States Bankruptcy Court for the Southern District of Ohio.

IT IS SO ORDERED.



Dated: July 3, 2025


Tyson A. Crist
United States Bankruptcy Judge

**UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

In re: Nickki S. Thomas,

Debtor.

Case No. 23-30498
Chapter 7
Judge Crist

Patricia J. Friesinger,
Chapter 7 Trustee in Bankruptcy,

Plaintiff,

Adv. No. 25-03005

v.

Nickki S. Thomas,

Defendant.

**Order Granting, in Part, and Denying, in Part, Motion for Default Judgment
Combined with Notice Hereof (Doc. 4), Without Prejudice**

This adversary is before the court on the *Motion for Default Judgment Combined with Notice Hereof [Doc. 1]* (the “Motion”) filed by Plaintiff, Patricia J. Friesinger, Chapter 7 Trustee (“Plaintiff”), on April 18, 2025. The Motion raises several procedural issues that the court will

address. As discussed below, the court will grant, in part, and deny, in part, the pending Motion, without prejudice, for the following reasons.

On March 3, 2025, Plaintiff filed the *Complaint of Trustee for Revocation of the Debtor's Discharge and for Costs, Expenses and Other Relief* (Doc. 1) (the "Complaint") against Defendant Nickki S. Thomas ("Defendant" and "Debtor"), who is the Debtor in the underlying chapter 7 case, Number 23-30498, filed on March 31, 2023. *See* Doc. 1. A *Summons in an Adversary Proceeding* (Doc. 2) was issued, directed to Defendant, and was served along with a copy of the Complaint, by regular, first-class United States mail, postage fully pre-paid, on the Debtor, as Defendant, and on the Debtor's attorney in her chapter 7 case, also on March 3, 2025. *See* Cert. of Serv. (Doc. 2). Said Certificate of Service indicates that copies of the Summons and Complaint were mailed to Debtor and Debtor's attorney at the addresses set forth in Debtor's petition and on the docket of Debtor's chapter 7 case; thus, in compliance with Federal Rule of Bankruptcy Procedure 7004(b)(9) and (g). The Motion states that service of the Complaint and Summons to the Debtor were "Returned to Sender," but that Debtor never filed a change of address in her chapter 7 case, such that service was proper. A review of the docket in Case No. 23-30498 confirms that no change of address was filed and that Debtor's address identified in the Certificate of Service (Doc. 2) is the same address listed in the Debtor's petition.

The first issue is the assertion in the Motion that "[a] Notice of Appearance has not been filed on behalf of the Defendant in this case and, as such, FRBP 7004(g) does not apply." Mot. at 3, ¶ 4. Although Plaintiff nonetheless served the Summons and Complaint in accordance with Bankruptcy Rule 7004(g), such that this statement appears to have been extraneous, the court does not read this rule to only apply if a debtor's attorney files a notice of appearance in an adversary proceeding; rather, it applies "[i]f, when served, a debtor is represented by an attorney[.]" Fed. R. Bankr. P. 7004(g). The purpose of this rule is "to avoid the possibility that a Debtor, represented by counsel in the bankruptcy case, could be served with process in an adversary proceeding, without counsel's knowledge, setting up conditions for a default judgment if the Debtor did not respond.' " *Cutuli v. Elie (In re Cutuli)*, 389 F.Supp.3d 1051, 1056 (M.D. Fla. 2019) (quoting *In re Ellis*, 2012 Bankr. LEXIS 4838, 2012 WL 4904540, at *2 (Bankr. D. Kan. Oct. 15, 2012)). Thus, so long as a debtor is, when served, represented by an attorney, whether in the main case or the adversary proceeding, a plaintiff should comply with this rule, as Plaintiff has done according

to the Certificates of Service (Docs. 2 & 3).¹ Failure to do so could be cause to set aside a default and default judgment for lack of personal jurisdiction. *See id.* at 1057 (“Without effective service of process, a court lacks personal jurisdiction over the defendant and lacks the power to enter judgment.” (citing *In re Worldwide Web Sys., Inc.*, 328 F.3d 1291, 1298-1301 (11th Cir. 2003))).

The second issue is that Plaintiff has moved for default judgment prior to the entry of default required by Federal Rule of Civil Procedure (“Civil Rule”) 55(a), made applicable to this proceeding by Bankruptcy Rule 7055. Recent case law in this district interpreting Civil Rule 55(a) guides that “[a] plaintiff must first obtain an entry of default as provided by [Civil Rule] 55(a), and then he or she may seek default judgment pursuant to subsection (b).” *Hood v. Jordan Rest. Grp. HQ LLC*, Case No. 2:22-cv-486, 2024 WL 4981306, at *1 (S.D. Ohio Nov. 4, 2024) (citing *Heard v. Caruso*, 351 F. App’x 1, 15 (6th Cir. 2009) (explaining that it is procedurally improper for a plaintiff to move for default judgment without first obtaining an entry of default from the Clerk); *see also* 10A Charles Alan Wright et al., Federal Practice and Procedure § 2682 (“Prior to obtaining a default judgment under either Rule 55(b)(1) or Rule 55(b)(2), there must be an entry of default as provided by Rule 55(a).))).

Because, however, Plaintiff has shown by affidavit that the Defendant and Debtor’s attorney have been served in accordance with Bankruptcy Rule 7004 and that Defendant has failed to plead or otherwise defend, the clerk must enter the Defendant’s default pursuant to Civil Rule 55(a). In that respect, the Motion is granted, in part, and the clerk is hereby directed to enter the Defendant’s default upon Plaintiff’s submission of the completed Entry of Default (Form 2600), available at <https://www.ohsb.uscourts.gov/sites/ohsb/files/local-forms/Entry-of-Default.pdf>. However, because default has not yet been entered, the remainder of the Motion is denied without prejudice to Plaintiff renewing the same following the entry of default.

The third issue, for which the court will entertain argument and case law within any renewed motion for default judgment filed by Plaintiff pursuant to Civil Rule 55(b)(2), is whether the Debtor’s discharge may be revoked pursuant to 11 U.S.C. § 727(d)(3), considering that the prior order of this court which Debtor is alleged to have not obeyed is an order to provide contact

¹ While true that a debtor’s attorney will receive notice of the filing of the Complaint by the court’s CM/ECF systems, they will not receive a copy of the summons, unless served by the Plaintiff in accordance with Bankruptcy Rule 7004(g). Further, current ECF Administrative Procedure 2(e) states that consent to electronic service does not apply to a summons and complaint. *See also* LBR 7004-1(b).

information for non-debtor individuals.² See *Order Granting Trustee's Motion to Compel Debtor to Turnover Information to the Trustee and for Debtor's Cooperation, Pursuant to L.B.R. 9011-3 [Doc. 31]* (Doc. 32, Case No. 23-30498,). Given that this issue is presently not before the court due to the denial of the request for default judgment in the Motion, without prejudice, the court has not examined the issue and expresses no opinion; however, this might raise the question of whether such disobedience fits within the language of § 727(a)(6), which provides that the “court shall grant the debtor a discharge, unless . . . the debtor has refused, in the case—(A) to obey any lawful order of the court, *other than* an order to respond to a material question or to testify[.]” 11 U.S.C. § 727(a)(6) (emphasis added).

The next issue is that the proposed order Plaintiff uploaded on the Motion would award costs of \$350.00 for a filing fee; however, the Motion did not request this specific relief.³ Moreover, it appears the filing fee was deferred in this adversary proceeding. Plaintiff may address this issue in a renewed motion for default judgment.

Based upon the foregoing, the Motion is **granted, in part**, as to Plaintiff's entitlement to the entry of Defendant's default pursuant to Civil Rule 55(a), which the clerk shall enter, but is **denied, in part, without prejudice**, as to the entry of a judgment by default at this time.

IT IS SO ORDERED.

Copies to:

Patricia J. Friesinger, electronically served
(Counsel for the Plaintiff)

Nickki S. Thomas, 164 W. Parkwood Drive, Dayton, Ohio 45405
(Debtor/Defendant)

Joyce M. Deitering, 8801 North Main Street, Suite 200, Dayton, Ohio 45415-1324
(Counsel for the Debtor)

² The court notes that Plaintiff has since filed adversary proceedings against all three individuals and appears to have identified addresses for service upon those individuals.

³ Given that a judgment has not yet been entered, costs have not been awarded or taxed. *See, e.g.* B2630 (Form 2630) (12/24), available at: <https://www.uscourts.gov/forms-rules/forms/bill-costs>. This process is described in 28 U.S.C. §§ 1920 and 1924, as well as Bankruptcy Rules 7054(b)(1) and 7058.