

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

MICHAEL P. TATRO :
 :
 v. : C.A. No. 09-631M
 :
 EQUIFAX, INC., et al. :

MEMORANDUM AND ORDER

Pending before me for determination (28 U.S.C. § 636(b)(1)(A)) are three Applications for Entry of Default filed by Plaintiff.¹ (Document Nos. 121, 122 and 123). Plaintiff commenced this pro se action in Providence County Superior Court in late 2009 and it was subsequently removed to this Court. His Second Amended Complaint is over fifty pages long and names over a dozen corporate and individual Defendants. Plaintiff asserts numerous state and federal claims including alleged violations of the Federal Fair Credit Reporting Act. Plaintiff presently seeks the entry of default under Rule 55(a), Fed. R. Civ. P., as to Oxford Collection Agency, Inc., Wolpoff & Abramson, LLC, and Mann Bracken, LLC. Id.

Rule 55(a) provides for the entry of default when a party against whom a judgment is sought fails to plead or otherwise defend a lawsuit. However, “[i]t is axiomatic that service of process must be effective under the Federal Rules of Civil Procedure before a default...may be entered against a defendant.” Brown v. State of R.I., No. 00-327L, 2000 WL 1787807 at *1 (D.R.I. Sept. 28, 2000) (citing Maryland State Firemen’s Ass’n v. Chaves, 166 F.R.D. 353 (D. Md. 1996)). See also Dahl v. Kanawha Inv. Holding Co., 161 F.R.D. 673, 685 (N.D. Iowa 1995) (where plaintiff “ha[s] never

¹ Plaintiff Michael P. Tatro is currently incarcerated serving a federal sentence imposed in 2009 for bank fraud and filing a false income tax return. See United States v. Tatro, CR No. 07-143S (D.R.I.).

properly served the defendants,...neither entry of default nor entry of default judgment would be proper.”).

Here, Plaintiff asserts that he served these Defendants in the manner authorized by Rules 4(h)(1) and 4(e)(1).² In particular, Plaintiff asserts that he served them by certified mail and that “an officer or agent” of each defendant received and signed for his Second Amended Complaint. (Document Nos. 102 and 106). Under Fed. R. Civ. P. 4(h)(1)(B), a corporation can be served by delivering a copy of the summons and complaint to “an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process.” As to Mann Bracken and Wolpoff & Abramson, Plaintiff submits certified mail receipts which are not signed or dated but rather are stamped “Mann Bracken, LLC.” Both were mailed to the same address in Rockville, Maryland. Since Plaintiff has offered no evidence as to the identity of the person who actually received the Complaints, there is no basis upon which to conclude that the person was an officer or agent of the corporations who was authorized to accept service of process and thus no basis upon which to conclude that Plaintiff effectively served either Mann Bracken or Wolpoff & Abramson. Accordingly, Plaintiff has not presently shown an entitlement to the entry of default against either of these Defendants.

As to Oxford Collection Agency, Plaintiff submits a certified mail receipt purportedly signed by Vice President Charles Harris. (Document No. 102). However, the signature is illegible and does not match the signature of Mr. Harris on another document subsequently submitted by Plaintiff. Compare Document No. 102 at p. 2 with Document No. 117-2 at p. 4. Finally, to further complicate

² Although Plaintiff alternatively relies upon Fed. R. Civ. P. 4(e)(1) as the basis for effective service, he fails to identify the particular state law(s) he followed and to show how the manner of service he utilized complied with such law(s).

the matter, Plaintiff also submitted certified mail receipts addressed to Mr. Harris and other purported Oxford officers and signed by “P. Lachance” with no indication as to his or her position or legal capacity to accept service of process. (See Document No. 125). Accordingly, there is no basis upon which to conclude that Plaintiff has effectively served Oxford Collection Agency and thus he has also not presently shown an entitlement to the entry of default against Oxford Collection Agency.

Conclusion

For the foregoing reasons, Plaintiff’s Applications for Entry of Default (Document Nos. 121, 122 and 123) are DENIED.

SO ORDERED

/s/ Lincoln D. Almond
LINCOLN D. ALMOND
United States Magistrate Judge
August 2, 2011