

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

EDUCATIONAL CREDIT
MANAGEMENT CORPORATION,

Plaintiff,

v.

Case No: 2:18-cv-133-FtM-29CM

SOUTHERN SANITATION, INC.,

Defendant.

ORDER

This matter comes before the Court upon review of Plaintiff's Motion for Clerk's Entry of Default Against Defendant Southern Sanitation, Inc. filed on April 12, 2018. Doc. 6. Plaintiff Educational Credit Management Corporation moves, pursuant to Federal Rule of Civil Procedure 55(a), for entry of Clerk's default against Defendant Southern Sanitation, Inc. for failure to defend. *Id.* For the reasons sated below, the motion will be denied without prejudice.

Pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, "[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, the clerk must enter the party's default." Similarly, Middle District of Florida Local Rule 1.07(b) provides:

When service of process has been effected but no appearance or response is made within the time and manner provided by Rule 12, Fed. R. Civ. P., the party effecting service shall promptly apply to the Clerk for entry of default pursuant to Rule 55(a), Fed. R. Civ. P.

M.D. Fla. R. 1.07(b). Prior to directing the Clerk to enter a default, the Court must first determine whether Plaintiff properly effected service of process. *United States v. Donald*, No. 3:09-cv-147-J-32HTS, 2009 WL 1810357, at *1 (M.D. Fla. June 24, 2009).

Service on a corporation can be made by any manner accepted in the state or “by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process[.]” Fed. R. Civ. P. 4(h)(1)(A), (e)(1). Florida law provides a hierarchy for service of process upon a corporation. Fla. Stat. § 48.081. A private corporation may be served by serving process on the president, vice president, or other head of the corporation, and in the absence of any such persons, on other corporate employees, including any officer or director. *Id.* § 48.081(1)(a)-(d). Alternatively, process may be served on a registered agent of the corporation or on an employee of the registered agent. *Id.* § 48.081(3)(a). If the address for the registered agent is a private residence, service on the corporation may be made by serving the registered agent in accordance with Section 48.031. Fla. Stat. § 48.081(3)(b). Section 48.031(1)(a) permits service by leaving a copy of the complaint at a person’s “usual place of abode with any person residing therein who is 15 years of age or older and informing the person of [its] contents.”

Here, the Return of Service states a process server from OJF Services Inc. served a true copy of the Summons, Civil Cover Sheet, Notice of Pendency of Other Actions, Related Case Order and Track One Notice, Standing Order, and Complaint

with Exhibits upon Barbara Hunter, “co-resident” of Southern Sanitation, Inc.’s registered agent, Matthew Beebe,¹ at 310 5th Street NW, Naples, FL 34120.² *See* Doc. 6-1. However, nothing in the Return of Service indicates whether Barbara Hunter is at least 15 years of age. Because it is unclear whether service was proper from the documents submitted, the Court will not direct the Clerk to enter a Clerk’s default at this time.

ACCORDINGLY, it is

ORDERED:

Plaintiff’s Motion for Clerk’s Entry of Default Against Defendant Southern Sanitation, Inc. (Doc. 6) is **DENIED without prejudice**.

DONE and **ORDERED** in Fort Myers, Florida on this 13th day of April, 2018.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record

¹ Matthew Beebe is the registered agent for Southern Sanitation, Inc. *See* Florida Department of State Division of Corporations, <http://dos.myflorida.com/sunbiz> (last visited Apr. 13, 2018). His address is listed as 310 5th St NW, Naples, FL 34120. *See id.*

² This address is a private property owned by Matthew Beebe. *See* Collier County Property Appraiser, <http://www.collierappraiser.com/> (last visited Apr. 13, 2018).