

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

COLVISTEC AG, a German
corporation

Plaintiff,

v.

Case No: 2:18-cv-783-FtM-38CM

EQUITECH INT'L CORP and MIP
TECHNOLOGY CORPORATION,

Defendants.

ORDER

This matter comes before the Court upon review of Plaintiff's Response to Order to Show Cause (Doc. 21) and Motion for Clerk's Default (Doc. 22) filed on January 4, 2019. On January 3, 2019, the Court directed Plaintiff to show cause why it had not filed a motion for entry of a clerk's default against Defendant MIP Technology Corporation ("MIP"). Doc. 20 at 3. Plaintiff now moves, pursuant to Rule 55(a) of the Federal Rules of Civil Procedure, for entry of a Clerk's default against MIP. Doc. 22 at 1. Having reviewed the Response (Doc. 21), the Court will take no further action on the Order to Show Cause. For the reasons stated below, the Motion for Clerk's Default (Doc. 22) is granted.

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 the 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). Section 48.081, Florida Statutes, provides a hierarchy for service of process upon a corporation. 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. Fla. Stat. § 48.081(1)(a)-(d).

Here, the Court finds Plaintiff properly effected service on MIP. The return of service states that on December 4, 2018, a process server served a true copy of the Summons and Complaint to Donald Skelton,¹ the director of MIP, at 28648 Lisburn Court, Bonita Springs, Florida. Doc. 16. Service of process was therefore properly

¹ The Court notes that Donald Skelton is also the Chairman of Defendant Equitech International Corporation (“Equitech”), and wrote in his improper *pro se* Answer on behalf of Equitech that MIP is a wholly-owned subsidiary of Equitech. *See* Doc. 11 at 1-3. MIP is a separate Defendant, however, and has not responded to the Complaint. Further, MIP, as a corporation, may not be heard except through counsel. *See* M.D. Fla. R. 2.03(e).

effected under Rule 4 of the Federal Rules of Civil Procedure and Florida law. *See* Fed. R. Civ. P. 4(h)(1)(A), (e)(1); Fla. Stat. § 48.081(1)(a)-(d). Pursuant to Rule 12, a defendant must serve an answer within 21 days after being served with the summons and complaint. Here, MIP has failed to do so within the required time. Therefore, the entry of Clerk's Default pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Rule 1.07(b) of the Middle District of Florida Local Rules is appropriate.

ACCORDINGLY, it is

ORDERED:

Plaintiff's Motion for Clerk's Default (Doc. 22) is **GRANTED**. The Clerk is directed to enter a Clerk's Default against Defendant MIP Technology Corporation. The Court will take no further action on the Order to Show Cause (Doc. 21).

DONE and **ORDERED** in Fort Myers, Florida on this 4th day of January, 2019.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record