

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOE HAND PROMOTIONS, INC,

Plaintiff,

v.

Case No. 8:23-cv-02311-VMC-NHA

RALPH A. WILLIAMS, *et al.*,

Defendants.

ORDER

Plaintiff's motion for entry of Clerk's default against Tastemakers (Doc. 23) is denied without prejudice.

On October 11, 2023, Plaintiff Joe Hand Productions filed this action alleging Defendants Ralph Williams, Diane Williams, and Tastemakers Elite, LLC unlawfully streamed Plaintiff's copyrighted program, *Triller Presents Tyson vs. Jones*, at their restaurant. Compl. (Doc. 1). Plaintiff claims that it served Tastemakers on October 26, 2023 (Doc. 9) and that Tastemakers failed to answer or otherwise respond. Doc. 23. Plaintiff now seeks entry of Clerk's default against Tastemakers. *Id.*

"When 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." FED. R. CIV. P. 55(a). However, "[i]n the absence of service of process (or waiver of service by the defendant), a court ordinarily may not exercise power over a party the complaint names as defendant." *Murphy Bros. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350 (1999). And, "[g]enerally, where service of process is insufficient, the court has no power to render judgment." *In re Worldwide Web Sys., Inc.*, 328 F.3d 1291, 1299 (11th Cir. 2003).

Federal Rule of Civil Procedure 4(h)(1) governs the service of process on United States corporations, partnerships, and unincorporated associations and applies to service on limited liability companies (LLCs). *See Fitzpatrick v. Bank of New York Mellon*, 580 F. App'x 690, 693 (11th Cir. 2014) (applying 4(h) to an LLC). It provides that service may be made "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)(B).

An LLC may also be served by following the law of the state in which the district court is located or in which service is effected. FED. R. CIV. P. 4(h)(1)(A), 4(e)(1). Section 48.062 of the Florida Statutes governs service of process on LLCs in Florida. That statute sets forth a hierarchy of persons

who may accept service on an LLC's behalf. Subsection (2) directs plaintiffs to first attempt service on the LLC's registered agent or an employee of the registered agent. *See* Fla. Stat. § 48.062(1). This appears to be the subsection under which Plaintiff's process server attempted to proceed. *See* Doc. 9.

Specifically, Plaintiff's proof of service for Tastemakers indicates that Plaintiff attempted to effect service on Tastemakers by serving process on "Ralph A. Williams – Agent for Service." Doc. 9. But the Florida Department of State, Division of Corporations Website does not list Mr. Williams as either a registered agent or an even an officer of Tastemakers.¹ While service may nonetheless be proper,² there is not enough information in the proof of service or in Plaintiff's motion to demonstrate that it is.

¹ Records of the Florida Department of State, Division of Corporations, are available at www.sunbiz.org, a verified website of a public agency. Federal Rule of Evidence 201 permits courts to take judicial notice of "a fact that is not subject to reasonable dispute because it[] ... can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Fed. R. Evid. 201(b). "The court may take judicial notice at any stage of the proceeding." Fed. R. Evid. 201(d).

² For example, service would be proper under Fla. Stat. § 48.062(5)(a) if the process server confirmed Mr. Williams was a resident at the place of service and informed Mr. William of the contents of the service of process. But the return does not state that. *See* Doc. 9.

Accordingly, Plaintiff's motion for Clerk's default against Tastemakers (Doc. 23) is **DENIED WITHOUT PREJUDICE** for failure to demonstrate effective service.

ORDERED on January 22, 2024.



NATALIE HIRT ADAMS
United States Magistrate Judge