

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION

In re:	:	
	:	
RICHARD GARY BERLIN,	:	Case No. 05-25176-BKC-JKO
	:	
Debtor.	:	Chapter 7
_____	:	
	:	
RICHARD GARY BERLIN,	:	
	:	
Plaintiff,	:	
vs.	:	Adv. Pro. No. 05-01395-JKO
	:	
INTERNATIONAL LOCATE & ASSET	:	
SERVICES, INC., et al.,	:	
	:	
Defendants.	:	
_____	:	

**ORDER GRANTING IN PART AND DENYING IN PART  
DEBTOR'S MOTION FOR  
ENTRY OF FINAL JUDGMENT DISCHARGING DEBT**

This adversary proceeding came on for hearing on July 10, 2006, on the Debtor's motion for entry of final judgment discharging debt [CP 10].

The Debtor filed his voluntary chapter 7 petition on August 17, 2005 [CP 1]. The Debtor received his chapter 7 discharge on November 21, 2005 [CP 6], and the Debtor's case was administratively closed on November 25, 2005. On March 6, 2006, the Debtor filed a motion [CP 11] to reopen the case in order to seek the discharge of prepetition debt which had been omitted from the Debtor's schedules. Pursuant to Local Rule 5010-1(B), the Court entered its standard Order Reopening Case to Add Omitted Creditor(s) [CP 14] on April 6, 2006. Under the terms of that Order, the Debtor was required to commence adversary proceedings against any omitted creditor whose debt the Debtor sought to discharge within 15 days.

This adversary proceeding was filed on April 20, 2006, as a single count complaint seeking a determination that debt allegedly owed to eight separate defendants – International Locate & Asset Services, Inc. (First USA/BankOne), Truelogic Financial Corp. (First USA), Citi-Shell, Palisades Collections, LLC (Discover Card), Capital One Bank, Burdines, Household Bank/Rhodes Furn., and MBNA America Bank – was dischargeable in the Debtor's original chapter 7 case. The entire text of the Complaint reads as follows:

Plaintiff, RICHARD GARY BERLIN, by and through the undersigned counsel, files this Complaint to Determine Dischargeability of Debts, and alleges:

1. The Debtor filed his Petition for Relief under Chapter 7 of Title 11 of the United States Code on August 17, 2005.
2. The 341 Meeting was held on September 16, 2005.
3. The case was discharged on November 21, 2005.
4. This Court has jurisdiction under 28 U.S.C. Section 1334.

5. The Debtor inadvertently omitted eight creditors, INTERNATIONAL LOCATE & ASSET SERVICES, INC., (FIRST USA/BANK ONE), TRUELOGIC FINANCIAL CO. (FIRST USA), CITI-SHELL, PALISADES COLLECTIONS, LLC (DISCOVER CARD), CAPITAL ONE BANK, BURDINES, HOUSEHOLD BANK/RHODES FURN, and MBNA AMERICA BANK from his Petition.

6. The Defendants' claims are unsecured and subject to discharge.

**WHEREFORE**, Plaintiff, RICHARD GARY BERLIN, prays that this Court enter a Final Judgment determining that the debts owed to the Defendants are dischargeable.

The Complaint lacks any information regarding the nature or amount of the debt. At a minimum, a complaint seeking a determination that a debt is dischargeable must specify the amount and nature of the debt which the plaintiff seeks to have discharged. *Helfrich v. Thompson*, 262 B.R. 407 (6<sup>th</sup> Cir. BAP 2001). Similarly, the Complaint lacks any identifying information regarding the Debtor, such as a Social Security number, or account number, by which the eight creditors might be able to identify the Debtor.

Moreover, the Complaint seeks relief against the eight Defendants in a single count, a clear mis-joinder of parties prohibited by Rule 7021. Although the joinder of eight defendants in a single Complaint is highly questionable in the absence of any allegation that the debts owed to each of the Defendants is in some way related, the Court is not unmindful of the costs associated with the filing of multiple actions, and that those costs will ultimately be borne by the Debtor in this no asset chapter 7 case. Accordingly, the Court will not require the filing of separate complaints against each of the Defendants, but will require that the claim against each Defendant be set forth in a separate count in any amended complaint which might be filed by the Debtor.

The summonses issued by the Clerk were served by Debtor's counsel on each of the Defendants by regular U.S. mail, addressed as follows:

International Locate & Asset Services, Inc., 7200 W. McNabb Road, Tamarac, FL 33321  
First USA/Bank One, 1001 Jefferson Plaza, Wilmington, DE 19701  
Corinne B. Rosner, Esq., 1776 N. Pine Island Road, Suite 208, Plantation, FL 33322  
Truelogic Financial Co., PO Box 4437, Englewood, CO 80155  
First USA, PO Box 15153, Wilmington, DE 19886-5153  
Citi-Shell, PO Box 15687, Wilmington, DE 19850  
Palisades Collections, LLC, 210 Sylvan Ave., Englewood, NJ 07632  
Discover Card, PO Box 15316, Wilmington, DE 19850  
Capital One Bank, 11013 W. Broad Street, Glen Allen, VA 23060  
Capital One Bank, 2001 Maywill Street, Richmond, VA 23230  
Bray & Singletary, PA, PO Box 53197, Jacksonville, FL 32201  
Burdines, 13141 34<sup>th</sup> Street North, Clearwater, FL 33762  
Household Bank/Rhodes Furn., PO Box 15519, Wilmington, DE 19850  
MBNA America Bank, PO Box 17054, Wilmington, DE 19884

In considering the Debtor's motion for default judgment, the question before the Court is whether the service of process made on each of the Defendants was good service of process for purposes of establishing the Court's jurisdiction over the Defendant.

Under Federal Rule of Bankruptcy Procedure 7004(b)(3), service on a corporation may be made

by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment of by law to receive service of process and, if the agent is one authorized by statute to receiver service and the statute so requires, by also mailing a copy to the defendant.

It is axiomatic that absent good service, the Court has no *in personam* or personal jurisdiction over a defendant. *Eastman Kodak Co. v. Studiengesellschaft Kohle mbH*, 392 F. Supp. 1152 (D. Del. 1975). Although federal trial courts normally face the issue of personal jurisdiction on a Rule 12(b) motion to dismiss, courts may raise the question *sua sponte* when deciding whether to enter a default judgment when the defendant has failed to appear, since a default judgment entered against a defendant who is not subject to personal jurisdiction is void. *System Pipe & Supply, Inc. v. M/V Viktor Kurnatovskiy*, 242 F.3d 322 (5<sup>th</sup> Cir. 2001). Indeed, a federal trial court has an affirmative

duty to examine its jurisdiction over the parties when entry of judgment is sought against a party who has failed to plead or otherwise defend. *In re Tuli, Tuli v. Republic of Iraq*, 172 F.3d 707 (9<sup>th</sup> Cir. 1999); *Williams v. Life Savings and Loan*, 802 F.2d 1200 (10<sup>th</sup> Cir. 1986). Without personal service of process in accordance with applicable law, a federal court is without jurisdiction to render a personal judgment against a defendant. *Royal Lace Paper Works, Inc. v. Pest-Guard Products, Inc.*, 240 F.2d 814 (5<sup>th</sup> Cir. 1957).

The service of process on seven of the Defendants, other than International Locate & Asset Services, Inc., which appeared in this case and which filed a responsive pleading, is doubtful. Many of the addresses listed appear to be lockbox addresses at which credit card bills are paid. Some are the addresses of lawyers who may or may not be authorized to accept service of process on their client's behalf.<sup>1</sup> These may be the best addresses of which the Debtor has knowledge from his records, but some of them at least appear to be doubtful addresses for good service on the corporate defendants. The Court will make no determination at this time as to whether good service has been had on any of the seven remaining defendants but will instead admonish counsel to obtain good service in accordance with Rule 7004.

Because of the problems discussed above, the Court cannot enter judgment against any of the seven non-appearing Defendants and in favor of the Plaintiff Debtor. The Court will accordingly dismiss the adversary proceeding as to all Defendants except International Locate & Asset Services, Inc., without prejudice to the filing of an amended complaint within 10 days of the date of this

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<sup>1</sup>It is of course good practice to serve a copy of an initial complaint on opposing counsel. The question which such service presents in a situation in which the party does not appear is whether service on counsel is sufficient to establish the Court's personal jurisdiction over the absent defendant.

Order. To the extent that the Debtor believes in light of this Order that service in compliance with Rule 7004 has not been had on any of the Defendants, the Debtor may seek the issuance of alias summons(es) by motion, and should submit a proposed order granting that relief at the time the motion is filed.

As to Defendant International Locate & Asset Services, Inc., which answered the Complaint through its President, Howard Serkin,<sup>2</sup> the untimely answer filed by this Defendant merely shows that it holds a *bona fide* claim against the Debtor, but does not suggest in any way that this Defendant has any basis whatever to challenge the dischargeability of this debt under any provision of 11 U.S.C. § 523. Accordingly, the Court will treat the Plaintiff Debtor's motion for final default judgment as a motion for judgment on the pleadings pursuant to Rule 7012, applying Fed.R.Civ.P. 12( c), and will grant the motion and enter judgment in favor of Plaintiff.

Based upon the foregoing, it is

ORDERED:

a. The Debtor's motion for final default judgment against Defendant International Locate & Asset Services, Inc., is hereby treated as a motion for judgment on the pleadings pursuant to Rule 7012, applying Fed.R.Civ.P. 12( c), and is hereby GRANTED. The Debtor's debt to

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<sup>2</sup>Corporations may only appear in federal court litigation through attorneys who are licensed to practice, *Palazzo v. Gulf Oil Corporation*, 764 F.2d 1381 (11<sup>th</sup> Cir. 1985), even where the person seeking to act on behalf of the corporation is its president and major shareholder, *In re Las Colinas Development Corp.*, 585 F.2d 7 (1<sup>st</sup> Cir. 1978), *cert. denied*, 440 U.S. 931 (1979). A search of The Florida Bar website, [www.flabar.org](http://www.flabar.org), discloses that Mr. Serkin is not a member of The Florida Bar. In light of the judgment entered against this Defendant, no other action with respect to Mr. Serkin's purported representation of the Defendant is required.

International Locate & Asset Services, Inc., is hereby determined to have been DISCHARGED by the Order Discharging Debtor entered November 21, 2005 [CP 6].

b. The Complaint is DISMISSED as to all other Defendants, without prejudice to the filing of an amended complaint complying with the terms of this Order within ten (10) days of the date hereof.

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Copy furnished to:

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2101 W. Commercial Blvd., #5400  
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