

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

FIRSTBANK de PUERTO RICO,

Plaintiff,

v.

**STELLA M. SAUNDERS,
VIRGIN ISLANDS HOUSING
FINANCE AUTHORITY,**

Defendants.

1:24-cv-00022-WAL-EAH

**TO: Claire Anaclerio, Esq.
Nycole Thompson, Esq.
Stella M. Saunders, No Appearance**

ORDER DENYING ENTRY OF DEFAULT

THIS MATTER comes before the Court on the Motion for Entry of Default, filed on October 30, 2024 by Plaintiff FirstBank Puerto Rico. Dkt. No. 14. Plaintiff seeks an entry of default against Defendant Stella M. Saunders. *Id.* The two-paragraph motion states that Saunders was personally served with copies of the Summons and Complaint on September 30, 2024; that she failed to appear, answer, or file a responsive pleading within the time allowed by Fed. R. Civ. P. 55(a), the applicable Rule; and thus entry of default against her is appropriate. *Id.* FirstBank attached a copy of the Proof of Service where a process server attests that he served Saunders personally on September 30, 2024 in Florida. Dkt. No. 14-1.

Federal Rule of Civil Procedure 55(a), governing entries of default by the Clerk of Court, provides:

Entering a Default. 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).

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The Court may enter default only against a party who has been properly served. *See United States v. One Toshiba Color Television*, 213 F.3d 147, 156 (3d Cir. 2000); *see also* 10A Charles Alan Wright, *et al.*, *Fed. Practice & Procedure* § 2682 (3d ed. 2008); *Anderson v. Mercer Cnty. Sheriff's Dept.*, 2013 WL 5703615 at *3 (D.N.J. Oct. 17, 2013) (“The entry of default ‘when there has been no proper service of the complaint is *a fortiori* void, and should be set aside.’” (quoting *Gold Kist, Inc. v. Laurinburg Oil Co.*, 756 F. 2d 14, 19 (3d Cir. 1985))).

Rule 55(a) requires that a party seeking entry of default must show “by affidavit¹ or otherwise” that the non-appearing party has failed to plead or otherwise defend. *Id.* This language explicitly requires an affidavit, or some document equivalent to an affidavit—i.e. a document where an attorney or party attests to the truth of the facts asserted, such as a declaration—to be provided in support of the application for entry of default. The Court does not interpret the “or otherwise” language to permit a notice of motion that is not attested to in any way to support granting relief under this rule.

Accordingly, the Court has required parties seeking an entry of default to provide either an affidavit or declaration attesting to the facts in support of the application and a memorandum of law supporting the correctness of the service, along with proof of service that the non-appearing party/parties have been served. Here, FirstBank has provided only a proof of service. Dkt. No. 14-1. It has not provided any authority that proof of service is

¹ *Black's Law Dictionary* (12th ed. 2024) defines affidavit as “[a] voluntary declaration of facts written down and sworn to by a declarant, usu. before an officer authorized to administer oaths.”

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sufficient, as opposed to both proof of service and an affidavit of service from the process server. *See* 5 V.I.C. § 114(a)(2).

In addition, FirstBank has not provided any sworn document attesting to any facts it relies on and no memorandum of law contending that entry of default is appropriate. This is particularly important here, since service was effected in Florida. Service of a summons and complaint on an “individual within a Judicial District of the United States” is governed by Fed. R. Civ. P. 4(e). In a similar vein, “Serving an Individual Located Outside the Virgin Islands” is governed by V.I. R. Civ. P. 4(f). FirstBank has failed to show that its service on Ms. Saunders satisfies Virgin Islands law, Florida law, or the Federal Rules. *See* Fed. R. Civ. P. 4(e), V.I. R. Civ. P. 4(f).

Given these deficits, entry of default is improper at this time.

Accordingly, it is hereby **ORDERED** that the “Motion for Entry of Default” filed by Plaintiff FirstBank Puerto Rico, Dkt. No. 14, is **DENIED WITHOUT PREJUDICE**.

ENTER:

Dated: November 4, 2024

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U.S. MAGISTRATE JUDGE