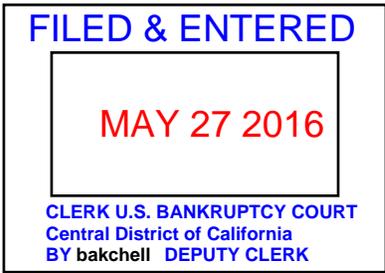


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NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:
L. SCOTT APPAREL, INC.,
Debtor.

HOWARD GROBSTEIN AS
LIQUIDATING TRUSTEE OF L. SCOTT
APPAREL INC.,
Plaintiff,
vs.
JPMORGAN CHASE BANK, a New York
corporation,
Defendant.

Case No. 2:13-bk-26021-RK
Chapter 11
Adversary No. 2:15-ap-01438-RK

**ORDER DENYING WITHOUT
PREJUDICE PLAINTIFF'S RENEWED
MOTION FOR DEFAULT JUDGMENT
UNDER LBR 7055-1**

Pending before the court is the "Renewed Motion for Default Judgment Under LBR 7055-1" ("Renewed Motion"), ECF 25, filed by Plaintiff Howard Grobstein as Liquidating Trustee of L. Scott Apparel, Inc. ("Plaintiff"), through his counsel, Lori L. Werderitch of Greenberg Glusker Fields Claman & Machtinger LLP. The Renewed Motion was scheduled for hearing on May 31, 2016 at 2:30 p.m. Having considered the Renewed

1 Motion, Memorandum of Points and Authorities and the Declarations of Lori L. Werderitch
2 and Howard Grobstein and exhibits in support thereof, the court determines that oral
3 argument is unnecessary, dispenses with further argument, vacates the hearing on the
4 Renewed Motion on May 31, 2016 and takes the Renewed Motion under submission and
5 rules as follows.

6 On February 9, 2016, Plaintiff, through his counsel, filed its original motion for
7 default judgment, which was set for hearing on March 1, 2016 at 2:30 p.m. The court
8 issued the following tentative ruling on Plaintiff's original motion for default judgment.

9 Deny motion for default judgment without prejudice for the following
10 reasons: (1) the motion is unsigned; (2) defendant has not been served as
11 required under FBRP 7004(h) by certified mail as an insured depository
12 institution, and plaintiff should serve defendant at both addresses for it on
13 the business entity listing on the California Secretary of State website,
14 which includes the Ohio address on the FDIC website for defendant; (3) the
15 evidence in support of the motion lacks foundation to show that prepetition
16 payments within the preference period were made to defendant (i.e., no
17 copies of cancelled checks showing payment to defendant, just a
18 conclusory statement that payments were made).

16 At the March 1, 2016 hearing, the court thoroughly discussed with counsel that the
17 service of process was defective, default will have to be set aside for lack of
18 compliance with Rule 7004(h) of the Federal Rules of Bankruptcy Procedure
19 ("Bankruptcy Rule(s)"), and process will have to be re-served, and the court
20 continued the hearing to May 31, 2016 at 2:30 p.m. to permit Plaintiff's counsel to
21 correct the deficiencies in the original motion.

22 On May 10, 2016, Plaintiff, through his counsel, filed his Renewed Motion. While
23 Plaintiff served the moving papers on Defendant by certified mail at the addresses on the
24 California Secretary of State and FDIC websites as suggested in the prior tentative ruling,
25 Plaintiff has not cured the original service problem of insufficient service of process in still
26 not serving Defendant, a FDIC-insured depository institution (FDIC Certificate No. 628
27 according to FDIC Bank Find search feature on FDIC website), with copies of the
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1 summons and complaint by certified mail addressed to an officer of the institution as
2 prescribed by Bankruptcy Rule 7004(h). The moving papers for the Renewed Motion do
3 not attach any proof of service of (1) service of the summons and complaint on
4 Defendant by certified mail; and (2) service of the summons and complaint addressed to
5 an officer of Defendant, as Bankruptcy Rule 7004(h) expressly requires. Movant's proof
6 of service of the summons and complaint attached as Exhibit A to Werderitch Declaration
7 in the moving papers, ECF 27, indicates service of the summons and complaint on
8 Defendant on August 14, 2015 without proof of service by certified mail and without proof
9 of service on Defendant addressed to the attention of an officer of Defendant as
10 expressly provided in Bankruptcy Rule 7004(h). Movant must comply with the specific
11 directions of Bankruptcy Rule 7004(h) to serve process (i.e., the summons and the
12 complaint) on Defendant, since that is what the rule requires. In this regard, the court
13 notes for Plaintiff that there is a difference in the service requirements for the summons
14 and complaint under Bankruptcy Rule 7004 and for subsequent pleadings under
15 Bankruptcy Rule 7005, making Federal Rule of Civil Procedure 5 applicable to this
16 adversary proceeding, and that the separate service requirements for different types of
17 pleadings must be scrupulously observed in order to accord adverse parties procedural
18 due process. Additionally, it appears to the court that another summons will have to be
19 issued upon Plaintiff's request in order to attempt further service of process in compliance
20 with Bankruptcy Rule 7004(e) because the prior summons most likely has lapsed in time.

21 Based on the foregoing, since Plaintiff has not yet cured the defect in service of
22 process under Bankruptcy Rule 7004(h) previously identified by the court, IT IS HEREBY
23 ORDERED that:

24 1. Plaintiff's Renewed Motion for default judgment is DENIED WITHOUT
25 PREJUDICE;

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2. The court vacates the clerk's entry of default in this adversary proceeding entered on December 9, 2015 (ECF 13) as improvidently entered due to lack of compliance with Bankruptcy Rule 7004(h) as discussed herein; and
3. The court vacates the hearing on the Renewed Motion scheduled for May 31, 2016 at 2:30 p.m. No appearances are required on the Renewed Motion on May 31, 2016.
4. The court continues the status conference currently scheduled for May 31, 2016 at 2:30 p.m. to August 30, 2016 at 1:30 p.m. to allow Plaintiff a further opportunity to properly serve Defendant with the summons and complaint as required by Bankruptcy Rule 7004(h). No appearances are required at the May 31, 2016 status conference.

IT IS SO ORDERED.

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Date: May 27, 2016



Robert Kwan
United States Bankruptcy Judge