



**ENTERED**

TAWANA C. MARSHALL, CLERK  
THE DATE OF ENTRY IS  
ON THE COURT'S DOCKET

**The following constitutes the order of the Court.**

**Signed December 16, 2004.**

**United States Bankruptcy Judge**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**IN RE:**

**JACK BUNTON,**

**Debtor.**

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**CASE NO. 03-47008-RFN-7  
CHAPTER 7**

**JACK E. BUNTON,**

**Plaintiff,**

**v.**

**CHARTER COMMUNICATIONS,**

**Defendant.**

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**ADVERSARY NO. 04-04290**

**ORDER DENYING  
PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT**

On December 6, 2004, the Court heard Plaintiff's Motion for Default Judgment (the "Motion") in this adversary proceeding. The Court denies the Motion for the reasons set forth herein.

Plaintiff filed his complaint on September 9, 2004. According to the executed summons filed with the Court, Plaintiff served the complaint and summons via certified mail addressed to Charter Communications, 4800 Blue Mound Road, Fort Worth, Texas 76106. On September 15, 2004, D'Ann Yocum signed the return receipt.

On October 20, 2004, the clerk entered a default against Defendant. On October 19, 2004, Plaintiff filed his motion for default judgment.

The service of the complaint and summons is governed by Rule 7004(b)(3) of the FEDERAL RULES OF BANKRUPTCY PROCEDURE. That rule provides that service upon a domestic corporation can be accomplished by, among other things, mailing a copy of the summons and complaint to the attention of an officer or managing or general agent of the corporation. There is a split of authorities as to whether Plaintiff must direct service to a specific officer or managing or general agent of a corporation, or whether he can effect service by using a generic designation. Compare *GMAC Mortg. Corp. v. Salisbury (In re Loloee)*, 241 B.R. 655 (Bankr. 9<sup>th</sup> Cir. 1999) (generic service not sufficient) and *Schwab v. Associates Commercial Corp. (In re C.V.H. Transport, Inc.)*, 254 B.R. 331 (Bankr. M.D. Pa. 2000) (generic service is sufficient).

The Court need not resolve the issue in this case because, regardless of which standard applies, Plaintiff has complied with neither. Unlike *Schwab*, upon which Plaintiff relies, Plaintiff did not address his complaint and summons to an “officer, managing or general agent or [ ] any other agent authorized by appointment or by law to

receive service of process.” Instead, Plaintiff mailed the complaint and summons to “Charter Communications.”<sup>1</sup>

Moreover, regardless of the method of service used by the Plaintiff, in order to comply with fundamental due process, service must be reasonably calculated, under all the circumstances, to apprise the defendant of the action and afford it an opportunity to present its objection. *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950). Notwithstanding D’Ann Yocum’s signature indicating her receipt of process on behalf of Defendant, Plaintiff has not (1) explained who Ms. Yocum is, (2) described her position with Defendant, or (3) demonstrated how her receipt of the summons and complaint complies with fundamental notions of due process.

For the foregoing reasons, the Plaintiff’s Motion for Default Judgment is denied.

SO ORDERED.

### END OF ORDER ###

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<sup>1</sup> In his motion for reconsideration, Plaintiff argues that when communicating with Defendant he addressed each mailing “Attention Manager.” However, the September 15, 2004, return receipt does not reflect this. Moreover, addressing service to a “Manager” of Defendant does not comply with Rule 7004(b)(3)’s requirement that service be made upon an officer or managing or general agent.