

SO ORDERED.

SIGNED this 10th day of October, 2025.



The signature of Lena Mansori James is written in cursive above the printed name.

LENA MANSORI JAMES

UNITED STATES BANKRUPTCY JUDGE

**UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF NORTH CAROLINA
WINSTON-SALEM DIVISION**

In re	)	
	)	
Chadley Management, Inc.,	)	Case No. 22-50726
	)	
Debtor.	)	Chapter 7
_____	)	
	)	
Brian R. Anderson, Chapter 7 Trustee	)	
for Chadley Management, Inc.,	)	
	)	
Plaintiff,	)	
v.	)	Adv. Pro. No. 24-06017
	)	
BMF Advance, LLC,	)	
	)	
Defendant.	)	
_____	)	

ORDER

GRANTING MOTION TO SET ASIDE ENTRY OF DEFAULT AND DEFAULT JUDGMENT

This adversary proceeding comes before the Court on the Defendant's Motion to Set Aside Entry of Default and Default Judgment (Dkt. No. 13, the "Motion"). The Plaintiff-Trustee filed a response in opposition (Dkt. No. 17, the "Response"), arguing that the Defendant fails to make the requisite showing to set aside the default and default judgment. The Court held a hearing on the Motion on

September 15, 2025, at which Matthew W. Buckmiller appeared on behalf of the Defendant and Richard P. Cook appeared on behalf of the Plaintiff. At the conclusion, the Court took the matter under advisement. After reviewing the Motion, the record in this case,¹ and the arguments from counsel, the Court will overrule the Objection and grant the Motion.

BACKGROUND

Chadley Management, Inc., the Debtor, filed a petition for relief under chapter 7 of the Bankruptcy Code on December 8, 2022. Brian R. Anderson, the Plaintiff, is the duly appointed, qualified and acting chapter 7 trustee. During its operation, the Debtor purportedly entered into numerous merchant cash advance agreements with multiple lenders—including two contracts with the Defendant—that the Plaintiff contends constitute usurious loans under applicable New York law. The Plaintiff filed a complaint commencing the above-captioned adversary proceeding on December 5, 2024, (Dkt. No. 1, the “Complaint”), asserting three claims for relief: (1) a declaratory judgment under 28 U.S.C. § 2201(a) that the agreements the Debtor entered into with the Defendant are criminally usurious loans that are void *ab initio* under New York law; (2) avoidance of all payments made to the Defendant on the agreements as constructively fraudulent transfers under 11 U.S.C. § 548(a)(1)(B); and (3) recovery of the avoided payments under 11 U.S.C. § 550(a)(1).

¹ The Court takes judicial notice of the pertinent entries and papers of this case docket. *See* Fed. R. Evid. 201(b), (c); *Anderson v. Fed. Deposit Ins. Corp.*, 918 F.2d 1139, 1141 n.1 (4th Cir. 1990); *Hughes v. MTGLQ Invs., LP (In re Hughes)*, 667 B.R. 282, 288 n.4 (Bankr. M.D.N.C. 2024).

On December 12, 2024, the Plaintiff filed a certificate of service stating the summons and Complaint were sent by first class mail and by certified mail return receipt requested to the Defendant at the following address:

BMF Advance, LLC
ATTN: Managing Officer or Agent
1820 Avenue M, Suite 1971
Brooklyn, NY 11239

(Dkt. No. 4). The Plaintiff filed a supplemental certified mail receipt, (Dkt. No. 6, Ex. A), indicating the mail was delivered to the above address on “12/18/2024,” but the recipient signature field reads “O. Box.” The check boxes next to the signature line marked “agent” and “addressee” are blank, and the space below the signature line for the receiver’s printed name states only “Receipt.”

The Plaintiff asked the Clerk of Court to enter a default against the Defendant, which the Clerk entered on January 17, 2025. (Dkt. No. 7). The Court entered a default judgment against the Defendant in the amount of \$982,881.00 on January 29, 2025. The entry of default and default judgment were both sent by the Bankruptcy Noticing Center (“BNC”) to the Defendant at 1820 Avenue M, Suite 1971, Brooklyn, NY 11239. (Dkt. Nos. 8, 12). The Plaintiff proceeded to execute on the judgment, withdrawing \$188,977.54 from the Defendant’s bank account on May 27, 2025.

The Defendant filed the Motion on July 8, 2025, contending the default judgment should be set aside under Rule 60(b)(4) for improper service. The Defendant, relying upon the New York State Division of Corporations and an attached declaration from its manager, Gavriel Yitchakov, argues the Plaintiff

served the Complaint and summons to the wrong suite number and that the accurate registered address is 1820 Avenue M, *Suite 125*, Brooklyn, New York 11230. (Dkt. No. 13, Ex. A, ¶¶ 12-15).²

In his Response, the Plaintiff takes the position that, regardless of the rationale cited under Rule 60(b), the Defendant fails to satisfy three of the four threshold requirements for setting aside a default judgment—a meritorious defense, lack of prejudice to the opposing party, and exceptional circumstances—all of which warrant denial of the Motion. The Plaintiff further argues that there is no basis for finding the default judgment void under Rule 60(b)(4), asserting that he served the correct mailing address as reflected in the Debtor’s own contracts with the Defendant and that none of the mailings were returned as undeliverable. (Dkt. No. 17, at 10).³

DISCUSSION

Federal Rule of Civil Procedure 55, made applicable through Federal Rule of Bankruptcy Procedure 7055, provides that a court “may set aside an entry of default for good cause, and it may set aside a final default judgment under Rule 60(b).” Fed.

² In the Motion, the Defendant further argued that service was insufficient because the Plaintiff did not name an actual officer or agent in the address. (Dkt. No. 13, ¶¶ 20-23). The Defendant relied upon decisions that have since been superseded by the 2022 amendment to Bankruptcy Rule 7004, which now explicitly allows for service of process “to the attention of the officer’s or agent’s position or title.” Fed. R. Bankr. P. 7004(i) (2025). The Defendant’s counsel withdrew the argument at the hearing on the Motion.

³ The Defendant further argues that it was unaware of this proceeding until \$188,977.54 was taken from its bank account and, therefore, the default judgment should be set aside based on excusable neglect or the catchall provision of Rule 60(b)(6). The Plaintiff counters that, other than a cursory citation to Rule 60(b)(1) and (6), the Defendant fails to provide any basis for finding excusable neglect or the exceptional circumstances necessary to warrant relief under either of those provisions. Because the Court finds cause to grant the Motion and set aside the default judgment under Rule 60(b)(4), it need not address the Defendant’s alternative arguments.

R. Civ. P. 55(c). Under Rule 60(b), a court may relieve a party from its final judgment in instances of mistake, inadvertence, surprise, or excusable neglect, *see* Fed. R. Civ. P. 60(b)(1); where there is newly discovered evidence, *see* Fed. R. Civ. P. 60(b)(2); where the opposing party has engaged in fraud, misrepresentation, or misconduct, *see* Fed. R. Civ. P. 60(b)(3); where the judgment is void, *see* Fed. R. Civ. P. 60(b)(4); where the judgment has been satisfied, released or discharged, or applying it prospectively is no longer equitable, *see* Fed. R. Civ. P. 60(b)(5); and where any other reason justifies relief, *see* Fed. R. Civ. P. 60(b)(6).

When seeking “relief from a judgment under Rule 60(b), a moving party must first show (1) that the motion is timely, (2) that he has a meritorious claim or defense, and (3) that the opposing party will not suffer unfair prejudice if the judgment is set aside.” *United States v. Welsh*, 879 F.3d 530, 533 (4th Cir. 2018); *see also Park Corp. v. Lexington Ins. Co.*, 812 F.2d 894, 896 (4th Cir. 1987). After meeting each of the three required threshold conditions, the movant “must then satisfy one or more of the six grounds for relief set forth in Rule 60(b).” *Park*, 812 F.2d at 896. “Although a fourth threshold showing of ‘exceptional circumstances’ is sometimes noted, analysis of this condition is limited to cases in which the moving party must demonstrate ‘extraordinary circumstances’ to qualify for relief under Rule 60(b)(6).” *BioLink Life Scis., Inc. v. Avara Pharm. Servs., Inc.*, No. 5:22-CV-404-FL, 2025 WL 778162, at *3 (E.D.N.C. Mar. 11, 2025) (citation omitted) (collecting and comparing cases); *see also Am. Sci. Team Richmond, Inc. v. Chan*, No. 3:22CV451, 2025 WL 791543, at *6 n.6 (E.D. Va. Mar. 12, 2025).

In this case, however, the Defendant argues that default judgment is void for want of personal jurisdiction and the majority view is that a motion under Rule 60(b)(4) “is not subject to the reasonable time limitations imposed in the other provisions of Rule 60.” *See, e.g., Heckert v. Dotson (In re Heckert)*, 272 F.3d 253, 256-57 (4th Cir. 2001); *United States v. One Toshiba Color Television*, 213 F.3d 147, 157 (3d Cir. 2000) (en banc) (collecting cases); *United States v. Boch Oldsmobile, Inc.*, 909 F.2d 657, 661–62 (1st Cir. 1990); *Bartch v. Barch*, 111 F.4th 1043, 1054 (10th Cir. 2024); *but see In re Vista-Pro Auto., LLC*, 109 F.4th 438, 444 (6th Cir. 2024), *cert. granted sub nom. Coney Island Auto Parts Unlimited, Inc. v. Burton*, 145 S. Ct. 2775 (2025). Motions filed under Rule 60(b)(4) are also exempt from the showing of a meritorious defense. *See Peralta v. Heights Med. Ctr.*, 485 U.S. 80, 84–86, (1988); *Garcia Fin. Group, Inc. v. Va. Accelerators Corp.*, 3 Fed. Appx. 86, 88 (4th Cir. 2001) (unpublished); 12 *Moore’s Federal Practice - Civil* § 60.44[5][b] (2025).⁴ As to the threshold condition regarding unfair prejudice to the opposing party, this “factor is of lesser importance,” *Nat’l Credit Union Admin. Bd. v. Gray*, 1 F.3d 262, 265 (4th Cir. 1993), and “the court should in every case give some, though not controlling, consideration to the question whether the party in whose favor judgment has been entered will be unfairly prejudiced by the vacation of his judgment.” *Compton v. Alton Steamship Co.*, 608 F.2d 96, 102 (4th Cir. 1979). The Fourth Circuit Court of Appeals has clarified that “delay in and of itself does not constitute prejudice to the

⁴ Though unnecessary in the context of a Rule 60(b)(4) motion to set aside default judgment, the Court finds the Defendant may have a meritorious defense to the Plaintiff’s fraudulent conveyance claims, which rely on the affirmative use of New York usury law. *See Anderson v. Secure Capital, LLC (In re Chadley Management, Inc.)*, No. 24-06029, slip op. at 3-5 (Bankr. M.D.N.C. June 9, 2025).

opposing party," *Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 616 F3d 413, 418 (4th Cir. 2010), and "the protraction of proceedings, the time and expense of a new trial, [and] the loss of post-judgment interest" do not constitute unfair prejudice. *See Werner v. Carbo*, 731 F.2d 204, 207 (4th Cir. 1984).

Here, the Plaintiff makes only a general assertion that his applications for compensation as special counsel—which are based in part on the recovery made from the default judgment in this proceeding—and the distributions to the creditors of the bankruptcy estate will be "negatively impacted" in the event the judgment is set aside. (Dkt. No. 17, at 8-9).⁵ This vaguely alleged impact does not amount to the type of prejudice—such as the reduced availability of evidence—that would support denying an otherwise valid Rule 60(b)(4) motion. *See In re DeCoro USA, Ltd.*, No. 09-10846, 2010 WL 3463372, at *3 (Bankr. M.D.N.C. Sept. 2, 2010). Accordingly, the Court does not find any unfair prejudice would be imposed upon the Plaintiff should the default judgment be set aside.

Having satisfied the applicable threshold conditions, the Defendant argues that the default judgment is void under Rule 60(b)(4) due to deficient service. "Absent waiver or consent, a failure to obtain proper service on the defendant deprives the court of personal jurisdiction over the defendant [and] . . . any judgment entered against a defendant over whom the court does not have personal jurisdiction is void." *Koehler v. Dodwell*, 152 F.3d 304, 306-307 (4th Cir. 1998)

⁵ The Court has deferred ruling on the Plaintiff-Trustee's applications for compensation (Case No. 22-50726, Dkt. Nos. 480, 484) until after it issues a ruling on the Motion, thus eliminating the need to claw back any awarded funds.

(citing *Armco, Inc. v. Penrod-Stauffer Bldg. Sys., Inc.*, 733 F.2d 1087, 1089 (4th Cir. 1984)).

Federal Rule of Bankruptcy Procedure 7004 provides the following method of service of a summons and complaint on a corporation in an adversary proceeding:

(b) SERVICE BY MAIL AS AN ALTERNATIVE. Except as provided in subdivision (h), in addition to the methods of service authorized by Fed. R. Civ. P. 4(e)–(j), a copy of a summons and complaint may be served by first-class mail, postage prepaid, within the United States on:

....

(3) a domestic or foreign corporation, or a partnership or other unincorporated association—by mailing the copy:

- (A) to an officer, a managing or general agent, or an agent authorized by appointment or by law to receive service; and
- (B) also to the defendant if a statute authorizes an agent to receive service and the statute so requires;

Fed. R. Bankr. P. 7004(b)(3).

The Fourth Circuit has not yet weighed in on an apparent circuit split over which party has the burden of establishing, for purposes of a Rule 60(b)(4) motion, whether a court lacked personal jurisdiction to enter a default judgment. *See Mid-Century Ins. Co. v. Thompson*, No. 2:18CV459, 2019 WL 3769952, at *3 (E.D. Va. Aug. 9, 2019) (collecting cases). However, there is a rebuttable presumption—under both existing Fourth Circuit jurisprudence and Rule 9006(e)⁶—that an addressee receives an item when it is properly addressed and placed in the mail with sufficient postage. *Rosenthal v. Walker*, 111 U.S. 185, 193 (1884) (observing the “well settled” rule that “if a letter properly directed is proved to have been either put into the post

⁶ Federal Rule of Bankruptcy Procedure 9006(e) provides that “service by mail of process, any other document, or notice is complete upon mailing.”

office or delivered to the postman, it is presumed . . . that it reached its destination at the regular time, and was received by the person to whom it was addressed.”); *Federal Deposit Ins. Corp. v. Schaffer*, 731 F.2d 1134, 1137 n.6 (4th Cir. 1984) (internal citation omitted) (“A letter properly addressed, stamped and mailed is presumed to have been duly delivered to the addressee.”). The presumption “is especially strong when the delivery is by certified mail,” and “[a]lthough it may be rebutted, the evidence required to overcome the presumption of receipt of certified mail correctly addressed and delivered . . . must be clear and convincing.” *Schaffer*, 731 F.2d at 1137, 1137 n.6. The Plaintiff, who sent the summons and Complaint by both first class and certified mail, maintains that no mailing was returned as undeliverable and the certified mail receipt was returned signed. (Dkt No. 17, at 10).

Nevertheless, any mailing must be “properly directed” or “correctly addressed” for the presumption of receipt to arise. *Rosenthal*, 111 U.S. at 193; *Schaffer*, 731 F.2d at 1137. The presumption is inapplicable where a plaintiff uses an incorrect address, even where the mail is not returned as undeliverable. *See Foxson v. N. Am. Specialty Ins. Co.*, No. CV RDB-23-2843, 2024 WL 3252957, at *4 (D. Md. July 1, 2024), appeal dismissed, 2025 WL 2171717 (4th Cir. Jan. 30, 2025). The Defendant’s assertion here is that the Plaintiff incorrectly directed his mailings to Suite 1971 rather than Suite 125 at 1820 Avenue M in Brooklyn, New York. (Dkt. No. 13, ¶¶ 12-15). The Plaintiff does not contest that the latter suite number reflects the Defendant’s registered address with the New York Secretary of State

Division of Corporations,⁷ yet he maintains that he served the correct address. (Dkt. No. 17, at 10).

The Plaintiff's sole support for his contention that Suite 1971 is "the correct mailing address" is its inclusion in the Defendant's "own contracts." (*Id.*). The two written contracts between the Debtor and the Defendant, which are attached as exhibits to the Complaint (Dkt. No. 1, Exs. A, B, the "Contracts"),⁸ contain only a single address for the Defendant: 180 Avenue M – Suite 1971, Brooklyn, NY 11230. The address, however, is not listed prominently on the first page or within the notices provision, but on the final page of each contract within addenda labeled "Balance Transfer Form." (*Id.*). Though parties to a contract may agree in advance to a method of service not otherwise permitted by the Federal Rules of Civil Procedure or Bankruptcy Procedure,⁹ the Plaintiff did not argue that provisions

⁷ The Court may also take judicial notice of public records, such as information contained in the New York Secretary of State Division of Corporations database. See *Hawk Aircargo, Inc. v. Chao*, 418 F.3d 453, 457 (5th Cir. 2005); *Pitt v. Quality Carriers, Inc.*, Case No. 3:24-cv-00629, 2025 WL 949991, at *2 n.1 (M.D. Tenn. Mar. 28, 2025); *Tombragel v. Oral & Facial Surgery Assocs., Drs. Perry, Morrison & Waters, LLC*, Case No. 1:24-cv-14, 2024 WL 3638118, at *3 n.2 (S.D. Ohio Aug. 2, 2024).

⁸ Counsel for both the Plaintiff and the Defendant cited to and discussed the contents of the Contracts, but neither moved to admit them into evidence at the hearing on the Motion. Because the Contracts are pertinent to determining whether the Defendant was properly served, and the parties do not dispute their authenticity, the Court will consider their contents in assessing the merits of the Defendant's Rule 60(b)(4) argument.

⁹ See, e.g., *Nat'l Equip. Rental, Ltd. v. Szukhent*, 375 U.S. 311, 315-316 (1963) ("[P]arties to a contract may agree in advance to submit to the jurisdiction of a given court, to permit notice to be served by the opposing party, or even to waive notice altogether."); *Doctor's Assocs., Inc. v. Distajo*, 107 F.3d 126, 136 (2d Cir. 1997) (rejecting argument that service did not comply with Rule 4 because "the AAA Rules, incorporated into all Subway franchise agreements, governed service of process and specifically allowed service by mail on a party's representative"); *Comprehensive Merch. Catalogs, Inc. v. Madison Sales Corp.*, 521 F.2d 1210, 1212 (7th Cir. 1975) ("It is well-settled that parties to a contract may agree to submit to the jurisdiction of a particular court and may also agree as to the manner and method of notice."); 4 Charles A. Wright & Arthur R. Miller, *FEDERAL PRACTICE AND PROCEDURE* § 1062 (4th ed.) ("[I]t should be remembered that a person or an entity can consent to

within the Contracts governed service of process, and—in any event—the contract language would not support that position.¹⁰ So, the Court is left to consider whether the Plaintiff's service to an address listed in the Contracts is “properly directed” or “properly addressed.” *Rosenthal*, 111 U.S. at 193; *Schaffer*, 731 F.2d at 1137. Based on the evidence before it, the Court finds it is not and, therefore, the presumption of receipt does not arise.

Because the Plaintiff offers no evidence that the Defendant received the summons and Complaint at Suite 1971, and the presumption of receipt is not applicable, the Court finds the Plaintiff failed to satisfy the service requirements of Bankruptcy Rule 7004. And although “[d]ue process does not require actual notice . . . [but rather] notice reasonably calculated, under all the circumstances, to

receive service of process in a manner that deviates from Rule 4 [and] . . . it is common practice in many commercial contexts for the parties to incorporate service provisions into their contracts.”).

¹⁰ Section 4.3 of both agreements between the Debtor and Defendant state:

Notices. All notices, requests, consents, demands and other communications hereunder shall be delivered by certified mail, return receipt requested, to the respective parties to this Agreement at the addresses set forth in this Agreement. Notices to BMF shall become effective only upon receipt by BMF. Notices to Merchant shall become effective three days after mailing. Merchant may also contact BMF by email at funding@bmfcapitalllc.com or phone at 646-493-2707.

(Docket No. 1, Exs. A, B). Though it requires service to the addresses set forth in the agreement, Section 4.3 facially applies only to “all notices, consents, demands and other communications *hereunder*,” (*id.* emphasis added), which some courts have noted “patently does not cover service of process, as service is not a notice or communication to be given under the contract.” *Glencore Ltd., v. Occidental Arg. Exploration & Prod.*, No. H-11-3070, 2012 U.S. Dist. 21971 (S.D. Tex. Feb. 22, 2012); *see also Camphor Techs., Inc. v. Biofer, S.P.A.*, 916 A.2d 142, 147-48 (Conn. Super. 2007) (“As indicated by the word ‘hereunder,’ the notice provision applies to notices given to either party under the contract. Service of process . . . does not fall within the provisions of the contract . . . Thus, the agreement between the parties does not control the proper method of notice, including service of process.”). In fact, a different provision in the agreements — Section 4.5— and another addendum to each contract specifically discuss waiver of personal service of process, but only as to the Debtor and its guarantors, not as to the Defendant. Moreover, at least one court has considered nearly identical language to Section 4.3 and concluded that it “does not constitute a waiver of formal service of process.” *Kalamata Cap. Grp.*, 2021 N.Y. Misc. LEXIS 3977, *10 (N.Y. Sup. Ct. Mar. 10, 2021).

apprise interested parties of the pendency of the action and afford them an opportunity to present their objections," *Wells Fargo Bank v. AMH Roman Two*, 859 F.3d 295, 303 (4th Cir. 2017) (citation modified), the Plaintiff does not argue that the mailing to Suite 1971 was reasonably calculated to apprise the Defendant of this proceeding.

CONCLUSION

For the foregoing reasons, the Court finds the Defendant has shown grounds exist under Rule 60(b)(4) to set aside the default judgment. The Court similarly concludes that the Defendant has established good cause to excuse and set aside the entry of default under Federal Rule of Civil Procedure 55(c), based on the same deficient service of process.¹¹

Accordingly, IT IS HEREBY ORDERED that the Defendant's Motion is GRANTED and the default and default judgment entered against the Defendant are SET ASIDE and VACATED. The Clerk of Court is directed to REOPEN this matter.

IT IS FURTHER ORDERED that the Plaintiff must disgorge and return the \$188,977.54 withdrawn from the Defendant's bank account within 30 days of this Order.

END OF DOCUMENT

¹¹ Not only are Rule 55(c) and Rule 60(b) motions analyzed using the same factors, but a Rule 55(c) motion to set aside entry of default employs a "good cause" standard, "which is more forgiving of defaulting parties" than the "more onerous" excusable neglect standard under a Rule 60(b) motion to set aside default judgment. *Colleton Preparatory Acad.*, 616 F.3d at 420. Because the Defendant meets the higher burden to set aside default judgment under Rule 60(b), it similarly satisfies the lesser standard to set aside the Clerk's entry of default under Rule 55(c).

PARTIES TO BE SERVED

Anderson, Chapter 7 Trustee v. BMF Advance, LLC

Main Case No. 22-50726

ADV. No. – 24-06017

John Paul Hughes Cournoyer, Bankruptcy Administrator

via cm/ecf

Richard Preston Cook on behalf of Plaintiff Brian R. Anderson, Chapter 7 Trustee

via cm/ecf

Matthew Buckmiller on behalf of Defendant BMF Advance, LLC

via cm/ecf