

KATHERINE GRISEWOOD,	:	IN THE COURT OF COMMON PLEAS OF
	:	LYCOMING COUNTY, PENNSYLVANIA
Plaintiff	:	
	:	
vs.	:	NO. 01-00,370
	:	
GRINDMASTER CRATHCO SYSTEMS,	:	CIVIL ACTION - LAW
INC., AMERICAN METAL WARE AND	:	
ALADDIN INDUSTRIES,	:	
Defendants	:	PETITION TO OPEN, VACATE AND/OR
	:	STRIKE DEFAULT JUDGMENT

Date: March 25, 2003

MEMORANDUM OPINION AND ORDER

Defendants Grindmaster Crathco Systems, Inc. and American Metal Ware (hereafter “Defendants”), have filed a Petition to Open, Vacate and/or Strike Default Judgment. This Motion was filed February 19, 2003.

Plaintiff commenced this action by filing a Writ of Summons on March 9, 2001. Plaintiff filed a Complaint on December 4, 2002. Plaintiff filed a Praecipe for Entry of Default Judgment on February 10, 2003.

At the same time that Grindmaster Crathco Systems, Inc. and American Metal Ware filed the Petition to Open, Vacate and/or Strike Default Judgment they filed Preliminary Objections. This Court entered Orders of Non-Compliance as to both filings (which was dated February 19, 2003 and filed February 26, 2003) and thereafter Defendants re-filed those documents with cover sheets attached to each the form of a Rule to Show Cause on the Petition to Open.¹

¹ The Court notes that the Cover Sheet utilized in Lycoming County Rule L206 is an outdated form and counsel should refer to the Local Rules of Court for current forms and/or to www.lycolaw.org for the current rules and current forms.

A Case Scheduling Conference was held on March 4, 2003. At that time it was determined that a case scheduling order could not be issued because of the pending petition to Open Default Judgment. *See* Order of March 4, 2003, filed March 6, 2003. At that time Defendants' counsel indicated his intent to have the matter of petitioning to open decided by briefs. Plaintiff's counsel asserted at the scheduling conference that the Petition to Open was defective because it did not include a verified complaint.

The Court actually received the Petition with cover sheet, which would relate to preliminary objections and petition to open, what that cover sheet indicating a form scheduling order for argument and filing of briefs, on March 11, 2003. The cover sheets submitted in both petition to open and preliminary objections iterate Defendants' counsel's position to submit the matter on briefs.

The Petition to Open relies upon Pa.R.C.P. 237.3(b) and the Petition as well as its accompanying brief asserts that the Court is required to open judgment because the Petition was filed within ten days of entering of the default and a meritorious defense was presented as provided by that Rule. The Petition, however, does not have attached to it a verified complaint as required by Pa.R.C.P. 237.3. The Petition instead has attached to it preliminary objections which the Petition indicates are intended to be filed, they being the same preliminary objections actually filed concurrently with the filing of the Petition on February 19th. Neither the Petition nor the accompanying brief (entitled Memorandum of Law in Support of Petition to Open Default Judgment and being attached to the Petition without being separately file-stamped or docketed) assert any basis for the opening of the default judgment with the exception of the provisions of Rule 237 relating to the Petition being filed within ten days of the entry of default

judgment. Clearly that Rule only applies with the Petition is accompanied with a verified answer.

In order for Plaintiff's default judgment to be set aside by motion of Defendants on the basis they would be asserting preliminary objections on the complaint their Petition would have to set forth an appropriate basis showing that the requirements of opening the judgment as established by *Schultz v. Erie Insurance Exchange*, 477 A.2d 471 (Pa. 1984) exists. *See*, Comment to Pa.R.C.P. 237.3. Accordingly, this Court ascertains that this Petition is deficient as a matter of law and in deciding this matter on the briefs submitted enters the following Order.

ORDER

Defendants Grindmaster, Inc.'s and American Metal Ware's Petition to Open,
Vacate and/or Strike Default Judgment, filed February 19, 2003 is hereby DENIED.

BY THE COURT,

William S. Kieser, Judge

cc: Joseph F. Orso, III, Esquire
Matthew Marrone, Esquire
Lucas & Cavalierf, LLC; 1601 Market St., Suite 2330; Philadelphia, PA 19103
Judges
Christian J. Kalas
Gary L. Weber, Esquire (Lycoming Reporter)