

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,	:	
	:	
Defendant	:	MOTION FOR RECONSIDERATION

*Date: April 22, 2003*

**MEMORANDUM OPINION and ORDER**

Before the Court is Defendants Grindmaster Crathco Systems, Inc. and American Metal Ware's (Grindmaster) Motion for Reconsideration filed April 8, 2003. Plaintiff Katherine Grisewood (Grisewood) commenced this action by filing a writ of summons on March 9, 2001. Grisewood filed a complaint on December 4, 2002. Grisewood filed a praecipe for entry of default judgment on February 10, 2003. Default judgment was entered on February 10, 2003.

Grindmaster filed a Petition to Open, Strike, and/or Vacate Default Judgment and Preliminary Objections on February 19, 2003. The Petition to Open relied upon Pa.R.C.P. 237.3(b) to assert that this Court was required to open judgment because the petition was filed within ten days of entry of the default judgment and a meritorious defense was presented. This Court issued a Memorandum Opinion and Order dated March 25, 2003 that denied the Petition to Open because the petition was deficient as a matter of law. The only basis set forth in the petition to open judgment was the provisions of Rule 237.3. But, a verified copy of a complaint or answer must be attached to the petition in order to invoke the benefits of the rule.

If not, then the petitioner must comply with the requirements of *Shultz v. Erie Insurance Exchange*, 477 A.2d 471 (Pa. 1984). Pa.R.C.P. 237.3, Note.

Grindmaster now argues that it can enjoy the benefits of Rule 237.3 despite attaching preliminary objections to the petition. To support this position, Grindmaster cites to *Peters Township Sanitary Auth. v. American Home and Land Dev. Co.*, 696 A.2d 899 (Pa. Cmwlth. 1997). *Peters* held that attaching preliminary objections, instead of a complaint or answer, did not invalidate a petition to open brought on the basis of Pa.R.C.P. 237.3. *Id.* at 901. The Commonwealth Court found support for this conclusion in the language of the 1994 Explanatory Comment to subdivision (b) of Rule 237.3, which then used a more inclusive term “proposed pleading” instead of complaint or answer. In light of the *Peters* holding, Grindmaster argues that the Court should reconsider its prior order and the Petition to Open should be granted.

The Court reaffirms its prior order and denies Grindmaster’s Motion for Reconsideration. The 2001 Explanatory Comment to Rule 237.3 states that preliminary objections are not an appropriate attachment to open default judgment under Rule 237.3 and casts doubt upon the holding of *Peters*. Specifically: “Contrary to the holding of the Commonwealth Court in *Peters Township Sanitary Auth. v. American Home and Land Dev. Co.*, 696 A.2d 899 (Cmwlth Ct. 1997), preliminary objections are not an appropriate attachment to a petition to open default judgment under Rule 237.3.” Pa.R.C.P. 237.3, 2001 Explanatory Comment. This comment also states that clarifying amendments have been made to the 1994 Explanatory comment. Therefore, if Grindmaster seeks to reopen the petition based on Rule

237.3 it must attach a verified copy of an answer. Grindmaster's failure to do so makes the Petition to Open brought on the basis of Rule 237.3 deficient as a matter of law.

Therefore, the Court must deny Grindmaster's Motion for Reconsideration.

**ORDER**

It is hereby ORDERED that Defendants Grindmaster Crathco Systems, Inc. and American Metal Ware's Motion for Reconsideration filed April 8, 2003 is DENIED.

BY THE COURT:

William S. Kieser, Judge

cc: Joseph F. Orso, III, Esquire  
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Judges  
Christian J. Kalas, Esquire  
Gary L. Weber, Esquire (Lycoming Reporter)