

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

WESLEY F. RAUCH and LAUREN A. RAUCH, : NO. 13 – 00,997
Plaintiffs :
 : CIVIL ACTION - LAW
vs. :
 :
ARCON GROUP, INC., :
Defendant : Petition to Strike Judgment

OPINION AND ORDER

Before the court is Defendant’s Petition to Strike Judgment, filed August 13, 2013. Argument on the petition was heard September 17, 2013.

Plaintiffs filed a Complaint on April 26, 2013, in which they assert, in Paragraph 2, that “Defendant is Arcon Group, Inc., a Pennsylvania Corporation with a registered office address at 963 High Street, Williamsport, Lycoming County, Pennsylvania, 17701.” Attempted service at this address by the Sheriff was not successful, however, and on May 21, 2013, the Sheriff filed a Return of Service in which he notes “Defendant is not known at address given.” On July 8, 2013, Plaintiffs filed a Praecipe for Judgment, asking the Prothonotary to enter judgment in favor of the Plaintiffs and against Defendant “for failure to file a response to the Complaint within twenty (20) days from the 26th day of April, 2013, the date Plaintiff filed the Complaint to Lycoming County Court of Common Pleas No. 13-00997¹ and for failure to respond to the Ten Day Important Notice filed on June 10, 2013.”² Attached to the Praecipe is a copy of a notice dated June 10, 2013, entitled “Important Notice”³ and copies of four U.S. Postal Service Certified Mail Receipts showing that (1) something was sent to Arcon Group, Inc at 199 Elm Street, New Canann, CT (no date), (2) something was received on 6/12 (no year) by (signature illegible), the article received having been addressed to Arcon Group, Inc. at the Elm Street address, (3) something was sent to Arcon Group, Inc at 199 Elm Street, New

¹ The court notes that Pa.R.C.P. 1026 allows twenty days after *service*, not *filing* of the complaint, in which to file a response, but this error does not figure into the issues in this case.

² Likewise, while Pa.R.C.P. 237.1 requires a ten-day period from the date the Notice of Intent is “*mailed or delivered*”, not “*filed*”, this mistake plays no part in the parties’ arguments.

³ The notice is that which is required by Pa.R.C.P. 237.1(a)(2).

Canann, CT (no date), and (4) something was received on 5/16 (no year) by (signature illegible), the article received having been addressed to Arcon Group, Inc. at the Elm Street address. Also attached are copies of the Notice to Plead and the Complaint that had been filed on April 26, 2013. There are no other filings of record.

The Prothonotary entered judgment by “Order” dated July 8, 2013,⁴ and Notice of Entry of Judgment was sent by the Prothonotary to Defendant at the Elm Street address on July 8, 2013.

In the instant petition to strike, Defendant contends the Complaint was not properly served and that default judgment was thus entered improvidently. Defendant also argues that the praecipe for entry of default judgment was defective. As these arguments are made through the vehicle of a petition to strike, the court must look to only the record before it, and may not consider any extraneous information. Mother’s Restaurant v. Krystkiewicz, 861 A.2d 327 (Pa. Super. 2004). Further, only a fatal defect appearing on the face of the record will permit the granting of a petition to strike. ANS Associates, Inc. v. Gotham Insurance Company, 42 A.3d 1074 (Pa. Super. 2012).

As to service of the Complaint, Defendant argues that since the Complaint indicates Defendant corporation is a Pennsylvania Corporation, it had to be personally served in Pennsylvania and service by mail in Connecticut was improper, citing Pennsylvania Rule of Civil Procedure 424. The court does not read the rules to require such, however. Rule 424 requires only that service on a corporation be made by handing a copy to certain enumerated persons. On the other hand, Rule 404 allows for service outside the Commonwealth by mail. There is no exception in Rule 404 for corporations outside the Commonwealth, and neither rule indicates that if a corporation is registered in Pennsylvania but has an office outside the Commonwealth, it must be served at the address registered in Pennsylvania. Plaintiffs’ attempt to serve Defendant at its Pennsylvania address was not successful and the court sees no reason why it could not proceed to attempt service at an address in Connecticut. Since the rules allow service in Connecticut by mail, that type of service was proper.

⁴ Inexplicably, such “Order” was never file-stamped, although it was docketed.

Defendant also argues, with respect to service of the Complaint, that the lack of a Certificate of Service is a fatal defect appearing of record. Defendant is correct that the lack of a Certificate of Service is a defect. Although Rule 405 does not use the term “Certificate of Service”, it does require a “return of service” be made by the “person making service”. Pa.R.C.P. 405(a). The rule requires the return to “set forth the date, time, place and manner of service, the identity of the person served and any other facts necessary for the court to determine whether proper service has been made.” Pa.R.C.P. 405(b). Plaintiffs contend the copies of the certified mail receipts attached to the Praecipe for Judgment are sufficient to prove service. As noted above, however, the receipts do not indicate what was sent, nor when, and to be completely technical, do not fully indicate when whatever was sent was received, as there is no year indicated on the receipts. Our Supreme Court has stated that “the [f]acts incident to the service of process should appear distinctly and affirmatively [on the return]. They should not be left to conjecture.” Neff v. Tribune Printing Company, 218 A.2d 756, 758 (Pa. 1966). Thus, while Plaintiffs may be correct that “it is obvious from the dates what was sent and when”, the process of coming to that conclusion is indeed a matter of conjecture. On the other hand, the court cannot conclude that the defect is fatal. In Reaves v. Knauer, 979 A.2d 404, 411 (Pa. Commw. 2009), the Commonwealth Court found that the lack of an “affidavit of service as required by Pa. R.C.P. No. 405(d)” was not a fatal defect that could not be cured by amended filings. Therefore, the default judgment will not be stricken on the grounds that Plaintiff did not effectuate proper service of the Complaint.

With respect to the praecipe for entry of default judgment, however, the lack of a Certificate of Service *does* appear to be a fatal defect. Rule 237.1 requires that the “praecipe for entry include[] a certification that a written notice of intention to file the praecipe” was mailed or delivered to the defendant, Pa.R.C.P. 237.1(a)(2), and, most importantly, that “[t]he notice and certification required by this rule may not be waived.” Pa.R.C.P. 237.1(a)(4).⁵ Therefore, since the certification required by the rule was missing,⁶ the Prothonotary should not

⁵ The Note to Rule 1037(b) also advises the reader to “[s]ee Rule 237.1 which requires the praecipe for default judgment to contain a certification of written notice of intent to file the praecipe.” Pa.R.C.P. 1037(b)(note).

⁶ Plaintiffs did not argue that the Praecipe itself was a certification but if they were to do so, such argument would be rejected as, in addition to the errors contained therein, outlined above, the praecipe does not provide the court

have entered the default judgment, and such will be stricken. See Erie Insurance Company v. Bullard, 839 A.2d 383 (Pa. Super. 2003)(unauthorized entry of judgment by the prothonotary renders the judgment void, and such a judgment must be stricken).

ORDER

AND NOW, this 23rd day of September 2013, for the foregoing reasons, Defendant's petition to strike the default judgment is hereby GRANTED. The judgment filed July 8, 2013, is hereby STRICKEN and the Prothonotary is directed to correct the record accordingly. Within five (5) days of this date, Plaintiff shall file a Return of Service in accordance with Pa.R.C.P. 405. Defendant is directed to file a response to the Complaint within twenty (20) days of this date. The trial on damages, scheduled for October 3, 2013, is hereby cancelled.

BY THE COURT,

Dudley N. Anderson, Judge

cc: Prothonotary
Bret Southard, Esq.
N. Randall Sees, Esq.
Gary Weber, Esq.
Hon. Dudley Anderson

with "the date, time, place and manner of service, the identity of the person served and any other facts necessary for the court to determine whether proper service has been made." Pa.R.C.P. 405(b).