

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

UNIFIRST CORPORATION,	:	NO. 13-00,022
Plaintiff	:	
	:	CIVIL ACTION - LAW
vs.	:	
	:	
CLARK TRUCKING & EXCAVATING, LLC,	:	
Defendant	:	Petition to Strike Judgment

OPINION AND ORDER

Before the court is Defendant’s Petition to Strike Judgment, filed May 3, 2013. Argument on the petition was heard July 10, 2013.

Plaintiff filed a Complaint on January 4, 2013, and the Sheriff served that Complaint on January 11, 2013, by “handing to John McCollum, Mechanic for said Defendant” at Defendant’s business address. The Complaint went unanswered and Plaintiff obtained a default judgment on March 8, 2013. On May 3, 2013, Defendant filed the instant petition, contending it “learned that a substantial judgment was entered against it” and arguing that service upon Mr. McCollum does not constitute proper service under the rules of civil procedure. The court agrees.

Pa.R.C.P. 424 provides as follows:

Rule 424. Corporations and Similar Entities

Service of original process upon a corporation or similar entity shall be made by handing a copy to any of the following persons provided the person served is not a plaintiff in the action:

- (1) An executive officer, partner or trustee of the corporation or similar entity, or
- (2) The manager, clerk or other person for the time being in charge of any regular place of business or activity of the corporation or similar entity, or
- (3) An agent authorized by the corporation or similar entity in writing to receive service of process for it.

Plaintiff argues that Mr. McCollum was a “person for the time being in charge” as at the time of service, he was the only person there. Defendant argues that Mr. McCollum was a part-time

mechanic who was working in the maintenance shop and not the office, and who was not in charge.

It appears the matter comes down to whether being the only person present makes that person “in charge”. To answer that question, one need only ask whether on the office lunch break, with everyone who works in that office out to lunch and with the office left open so that he might use the facilities, a teenager hired to mow the grass is in charge of the office. Surely not. Clearly, the scenario in the instant case also does not fit the requirements of the rule.

Accordingly, proper service having been not effectuated, the default judgment will be stricken. As defendant now has obtained a copy of the Complaint, however, the court will not require it to be served again.

ORDER

AND NOW, this 16th day of July 2013, for the foregoing reasons, Defendant’s Petition to Strike Judgment is GRANTED. The default judgment entered March 8, 2013, is hereby STRICKEN. Defendant shall file a response to the Complaint within twenty (20) days of this date.

BY THE COURT,

Dudley N. Anderson, Judge

cc: John Doran, Esq., 69 Public Square, Suite 700, Wilkes-Barre, PA 18701
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Hon. Dudley Anderson