

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

EUROOPTICS LTD.,	:	NO. 16 – 1674
Plaintiff	:	
	:	
vs.	:	CIVIL ACTION - LAW
	:	
WILLIAM LINDSEY MINCHER and WELLS FARGO BANK,	:	Petition to Strike or
Defendants	:	Open Default Judgment

OPINION AND ORDER

Before the court is Defendant Wells Fargo Bank’s¹ Petition to Strike or Open Judgment, filed March 3, 2017. Argument was heard April 5, 2017, following which defense counsel requested and was granted the opportunity to submit a brief responsive to the brief submitted by Plaintiff’s counsel at argument. Counsel’s brief was submitted April 11, 2017 and the matter is now ripe for decision.

Plaintiff filed its Complaint on December 2, 2016 and sent a copy to Defendant by certified mail inasmuch as Defendant is located outside of the Commonwealth.² An Affidavit of Service filed by Plaintiff on January 3, 2017 attaches the “green card” showing delivery on December 12, 2016.

On January 17, 2017, Plaintiff filed a Praecipe to Enter Judgment against Defendant for want of a responsive pleading, and judgment was entered that date.

In the instant Petition to Strike the Judgment, Defendant contends there is a defect on the face of the record which renders the judgment void. Defendant also

¹ Although there are two defendants in this action, for ease of reference in the instant opinion the court will refer to Defendant Wells Fargo Bank as simply “Defendant”; Defendant William Lindsey Mincher is not involved in the instant petition.

² Pa.R.C.P. 404(2) allows for service outside the Commonwealth “by mail in the manner provided by Rule 403”.

seeks to open the judgment but since the court finds that the judgment must be stricken, only that portion of the petition will be addressed.

The Pennsylvania Supreme Court has held that "the rules relating to service of process must be strictly followed, and jurisdiction of the court over the person of the defendant is dependent upon proper service having been made." Azzarrelli v. City of Scranton, 655 A.2d 648, 650-51 (Pa. Commw. Ct. 1995), *quoting* Sharp v. Valley Forge Medical Center and Heart Hospital, Inc., 422 Pa. 124, 127, 221 A.2d 185, 187 (1966).

In the instant case, in serving Defendant outside of the Commonwealth by mail, Plaintiff was subject to Rule 403 which requires that "a copy of the process shall be mailed to the defendant *by any form of mail requiring a receipt signed by the defendant or his authorized agent.*" Pa.R.C.P. 403 (emphasis added). As the Note to the rule advises, the form of mail referenced is "restricted delivery". Plaintiff did not send the Complaint to Defendant by restricted delivery, however, and the "green card" does not contain a printed name to identify the illegible signature contained thereon, nor does it indicate whether the signer is an agent of the addressee. Not only does this violate Rule 403, it is also important because Rule 424 provides for "[s]ervice of original process upon a corporation or similar entity ... 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."

Pa.R.C.P. 424. It cannot be determined whether the person signing the “green card” is eligible under this Rule to accept service on behalf of Defendant.

Further, Plaintiff’s Return of Service does not comply with Rule 405, which provides, in pertinent part:

(a) When service of original process has been made the sheriff or other person making service shall make a return of service forthwith.

...

(b) A return of service shall 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.

(c) Proof of service by mail under Rule 403 shall include a return receipt signed by the defendant....

Pa.R.C.P. 405. Plaintiff’s Return of Service, filed January 3, 2017, simply attaches the “green card” but does not indicate the “identity of the person served” and thus the court cannot determine whether proper service has been made under Rule 424. As the Pennsylvania Supreme Court has stated, "there is no presumption as to the validity of the service and the return itself is required to set forth service in conformance with the rules." Azzarrelli, supra at 651, quoting Sharp at 187.

Therefore, since it is apparent on the face of the record that service was defective, and the prothonotary was thus without the authority to enter the default judgment, that judgment was void *ab initio* and must be stricken. See Green Acres Rehabilitation and Nursing Center v. Sullivan, 113 A.3d 1261 (Pa. Super 2015).

Accordingly, the court enters the following:

ORDER

AND NOW, this day of May 2017, for the foregoing reasons, Defendant's Petition to Strike the Default Judgment is hereby GRANTED. The default judgment entered against Wells Fargo Bank on January 17, 2017 is hereby STRICKEN and the Prothonotary is directed to mark the docket accordingly. Defendant Wells Fargo Bank may file an Answer to the Complaint within thirty (30) days of this date.

BY THE COURT,

Dudley N. Anderson, Judge

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