

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**

WILMINGTON, DELAWARE 19801

John K. Welch
Judge

October 21, 2014

Ms. Melissa Debro
326 Skeet Avenue
Bear, DE 9801
Pro-Se Plaintiff

Mr. Gerald A. Giles
P.O. Box 544
Bear, DE 19701
Pro-Se Defendant

RE: *Melissa Debro v. Gerald A. Giles*
C.A. No.: CPU4-14-002227

MEMORANDUM OPINION

Dear Ms. Debro and Mr. Giles,

The instant matter arises out of an alleged breach of contract. On August 6, 2014, Melissa Debro (“Plaintiff”) filed a Complaint against Gerald A. Giles (“Defendant”). In the Complaint, Plaintiff alleges that on November 14, 2005, Plaintiff loaned \$48,500.00 to Defendant for the purpose of purchasing property (the “Property”), and that Defendant has failed to make any payments on the loan.

I. The Facts.

On August 7, 2014, the Clerk signed and sealed the praecipe and summons, which directed the New Castle County Sheriff to effect service on Defendant at 445 Jacobson Drive, Newark, Delaware 19702. However, service was returned *non est inventus* and was therefore not perfected.

On August 27, 2014, Plaintiff filed an Alias Summons and Alias Praecipe to the Clerk of the Court, requesting that Defendant be served by certified mail at 2901 South 20th Street, Philadelphia, Pennsylvania 19145. Plaintiff also filed a second Alias Summons and Alias Praecipe to the Clerk of the Court, requesting that Defendant be served by certified mail at 904

Kenmore Road, Philadelphia, Pennsylvania 19151. The Clerk of the Court signed and sealed both alias summonses and praecipes.

The docket reflects that on September 17, 2014, Plaintiff supplied the Court with a signed receipt of the certified mailing to Defendant at 904 Kenmore Road, Philadelphia, Pennsylvania 19151 Philadelphia, PA. Plaintiff also presented the Court with a tracking report from the post office, which indicated that the certified mail was delivered on August 29, 2014.

On September 24, 2014, Plaintiff filed this present Motion for Default Judgment, restating the allegations made in her complaint. On October 10, 2014, the Court held a hearing on Plaintiff's Motion. Plaintiff requested that the Court enter judgment against Defendant for want of an Answer. Defendant claimed that the certified mailing was sent to his fiancé's house, but argued that he never personally received the summons or complaint because he does not live with her. Defendant also stated that his mailing address is P.O. Box 544, Bear, Delaware 19701. After hearing argument from both parties, the Court reserved decision.

II. Discussion

Pursuant to Court of Common Pleas Civil Rule 55(c)(2), the Court may enter default judgment... “[w]hen a party against whom a judgment for affirmative relief is sought, has failed to appear, plead, or otherwise defend.” In order for the Court to enter default judgment for want of an answer, service must be properly perfected on the defendant. “The right to question irregularities in, or sufficiency of, service of process is well settled in Delaware.”¹ In the matter at hand, a review of the docket and the record indicates that Defendant was never personally served as required by rules of this Court.

¹ *Alston v. Dipasquale*, 2001 WL 34083824 at * 1 (Del. Super. Oct. 19, 2001).

Under Court of Common Pleas Civil Rule 4(f), service of summons shall be made as follows:

Upon an individual other than an infant or incompetent person by delivering a copy of the summons, complaint and affidavit, if any, to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion *then residing therein*, or by delivering copies thereof to an agent authorized by appointment or by law to receive service of process.

The service of process must be specified in the praecipe, and the Clerk of the Court must then issue the process as specified.² Service is made by the Sheriff unless the Court appoints a person to perfect service by way of a special service processor.³ The Sheriff's return is *prima facie* proof of proper service.⁴ Here, the praecipe directs the New Castle County Sheriff to effect service on Defendant at 445 Jacobson Drive, Newark, Delaware 19702; however, service was returned *non est inventus*. Therefore, service was not perfected as required by Court of Common Pleas Civil Rule 4(f).

After a review of the record, it appears that Plaintiff then attempted to comply with the Delaware Long Arm Statute pursuant to 10 *Del. C.* § 3104. Under the Delaware Long Arm Statute, this Court has personal jurisdiction over nonresidents under certain circumstances. Section 3104(d) provides, in pertinent part:

When the law of this State authorizes service of process outside the State, the service, when reasonably calculated to give actual notice, may be made:

(1) By personal delivery in the manner proscribed for service within this State.

² CCP Civil Rule 4(a).

³ CCP Civil Rule 4(a), (d).

⁴ *Arrow Financial Services, LLC v. Ajavon*, 2003 WL 23112734 at * 1 (Del. Com. Pl. July 29, 2003).

(2) In the manner provided or prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction.

(3) By any form of mail addressed to the person to be served and requiring a signed receipt.

(4) As directed by a court.

Here, it appears that Plaintiff attempted to serve Defendant pursuant to § 3104(d)(3) by filing an Alias Praecipe and Alias Summons and requesting that Defendant be served through certified mail. Under § 3104(e), “[w]hen service is made by mail, proof of service shall include a receipt signed by the addressee or other evidence of personal delivery to the addressee satisfactory to the court.”⁵ Although Plaintiff has provided a signed certified mailing receipt, the receipt was not signed by the Defendant, who was the addressee, and Plaintiff did not provide any other evidence of personal delivery. Moreover, at the hearing, Defendant stated that he did not know about the suit filed against him until Wednesday, October 8, 2014 when he appeared in court for a foreclosure proceeding concerning the home located on the Property. Therefore, the Court finds that Plaintiff’s service was inadequate under 10 *Del. C.* § 3104.


III. Conclusion

The Court concludes, after conducting a diligent review of the docket and record, that Plaintiff never properly served Defendant with the Summons and Complaint as required by Court of Common Pleas Civil Rule 4(f) and 10 *Del. C.* § 3104. Plaintiff’s Motion for Default Judgment is denied. Since defendant has now personally entered his appearance in the instant Motion, defendant is directed to file an Answer within ten (10) days of this opinion with the Court and send a copy to the plaintiff. Defendant is also specifically instructed to provide a

⁵ 10 *Del. C.* § 3104(e) (emphasis added).

current residential mailing address for future discovery by the plaintiff and summonses by the Court, not a P.O. Box when he formally answers the complaint.

IT IS SO ORDERED this 21st day of October, 2014.



John K. Welch
Judge

/jb
cc: Ms. Tamu White, Civil Division Chief Clerk