IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE

IN AND FOR NEW CASTLE COUNTY

OLD TOWN HALL ASSOCIATES, LLC,	)	
Plaintiff,	)	
v.	)	**C.A. No.: CPU4-11-001539**
COASTAL MANAGEMENT, LLC, and KIMBERLY ROBINSON,	)	
Defendants.	)	

Submitted: March 9, 2012
Decided: March 15, 2012

ON PLAINTIFF'S MOTION FOR DEFAULT JUDGMENT AGAINST KIMBERLY ROBINSON
MOTION DENIED

Jessica Lynn Mullenix, Esquire, Doroshow, Pasquale, Krawitz and Bhaya, 1202 Kirkwood Highway, Wilmington, Delaware 19805. *Attorney for Plaintiff.*

Coastal Management, LLC, c/o Secretary of State of Delaware Division of Corporations, P.O. Box 898, Dover, Delaware, 19903. *Defendant.*

Kimberly Robinson, 514 Baltimore Street, Aberdeen, Maryland, 21001-3159. *Defendant.*

WHEREAS

1. On February 25, 2011, Plaintiff filed with the Court the Complaint in this action for breach of contract, based on an alleged lease agreement between the parties.

2. On November 7, 2011, Defendant Coastal Management, LLC, was properly served through the Secretary of State of the State of Delaware.

3. On December 1, 2011, Plaintiff filed with the Court a document captioned "First Proof of Non-Receipt as to Defendant, Kimberly Robinson." ("Ms. Robinson") This document provides that Plaintiff attempted to serve Ms. Robinson, a Maryland resident, via registered mail, as authorized by 10 *Del. C.* § 3104. On November 18, 2011, the registered mail was returned as "Return to Sender Unable to Forward."

4. On December 16, 2011, Plaintiff filed with the Court a document captioned "Second Proof of Non-Receipt as to Defendant, Kimberly Robinson." This document provides that Plaintiff attempted to serve Ms. Robinson, again via registered mail. On December 5, 2011, the registered mail was returned as "Return to Sender Unable to Forward."

5. On February 6, 2012, Plaintiff filed with the Court the instant Motion for Default Judgment (the "Motion"), requesting that the Court enter default judgments against both Coastal Management, LLC and Ms. Robinson.

6. On February 24, 2012, the Court held a hearing on the Motion. Plaintiff was present at the hearing and presented argument. Coastal Management, LLC and Ms. Robinson failed to appear at the hearing.

7. At the hearing, the Court granted Plaintiff's Motion with respect to Coastal Management, LLC, finding that Coastal Management, LLC was properly served through the Secretary of State, and failed to file a responsive pleading as required by Court of Common Pleas ("CCP") Civil Rule 12.

8. The Court reserved decision on Plaintiff's Motion against Ms. Robinson, questioning whether Defendant Ms. Robinson had been properly served based on Plaintiff's December 1, 2011 and December 16, 2011 filings with the Court. At the hearing, Plaintiff argued that 10 *Del. C.* § 3104 contains a provision which provides that if a plaintiff attempts to effect long arm

service of process via registered mail twice, and both registered mailings are returned undeliverable, the plaintiff may file certifications representing that the mailings were returned undeliverable, and the filing of these certifications *per se* establishes proper service on the defendant. However, upon review of the statute both before and during the hearing, the Court was unable to find such provision within the statute. During the hearing, counsel for Plaintiff was likewise unable to point out this statutory provision.

9. Thus, the Court reserved decision, providing Plaintiff with an opportunity to submit a legal memorandum in support of its argument set forth at the hearing.

10. On March 9, 2012, Plaintiff submitted a legal memorandum in support of its position. This is the Court's final decision and Order on the Motion after consideration of the pleadings, service documents, the Motion, the arguments presented on the record at hearing on the Motion, and Plaintiff's post trial submission.

DISCUSSION

CCP Civil Rule 55(b)(2) governs motions for default judgment and provides that "when a party against whom a judgment for affirmative relief is sought, has failed to appear, plead or otherwise defend as provided by these Rules... judgment by default may be entered by... the Court." CCP Civil Rule 12(a) requires defendants in civil actions filed in this Court to file an answer to the complaint filed against them within twenty days of *service of process*.

The provisions of 10 *Del. C.* § 3104 provide for service of process over non-residents. Ms. Robinson is not a resident of the State of Delaware. Therefore, this statute controls whether Ms. Robinson was properly served in this case. The statute provides that service may be made "[b]y any form of mail addressed to the person to be served and requiring a signed receipt."[1]

[1] 10 *Del. C.* § 3104(d)(3).

The statute further provides that "[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."[2] Finally, the statute establishes that proof of service also includes "refusal of the notice."[3]

In *Maldonado v. Matthews*, the court found that the plaintiff had submitted evidence of personal delivery that was satisfactory to the court because plaintiff's counsel submitted an affidavit stating that she received a voicemail from someone identifying herself as the defendant, and within this voicemail, this person acknowledged receipt of service.[4] Further, counsel sent at least three mailings to the defendant's believed address, performed research as to where defendant may have been living, and filed proof of non-receipt of service of process with the court.[5]

Plaintiff argues that *Maldonado* is controlling here because in this case, counsel sent several mailings to Ms. Robinson's believed address, researched where Ms. Robinson might be living, and filed two proofs of non-receipt of service of process with the Court.

The Court does not agree. The provisions of 10 *Del. C.* § 3104 provide that when long arm service of process is made, as it was attempted here, via registered mail, that proof of delivery includes receipt signed by the addressee, a return receipt marked refused, or "other evidence of personal delivery to the addressee satisfactory to the court."[6] In *Maldonado*, an affidavit from plaintiff's counsel indicating that someone purporting to be the defendant called counsel and acknowledged service of process qualified as appropriate "other

[2] 10 *Del. C.* § 3104(e).
[3] 10 *Del. C.* § 3104(h).
[4] 2010 WL 663723, at *4 (Del. Super. Feb. 23, 2010).
[5] *Id.*
[6] 10 *Del. C.* § 3104(e).

evidence...satisfactory to the court."[7] In the instant case, the Court acknowledges that Plaintiff's Counsel has expended much effort in attempting to perfect service over Ms. Robinson. However, Plaintiff has failed to offer any "other evidence of personal delivery to the addressee satisfactory to the court," such as was provided in *Maldonado*. Therefore, the Court finds that Plaintiff has not perfected service over Ms. Robinson and the Court thus may not enter a default judgment against Ms. Robinson.

DECISION

Accordingly, it is hereby **ORDERED** that Plaintiff's Motion for Default Judgment against Defendant Kimberly Robinson is **DENIED.** As previously stated, it is hereby further **ORDERED** that Plaintiff's Motion for Default Judgment against Defendant Coastal Management, LLC is **GRANTED.**

IT IS SO ORDERED this 15th day of March, 2012.

/S/ Joseph F. Flickinger III
Joseph F. Flickinger III
Judge

[7] 2010 WL 663723, at *4.