

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

T&L PAINTING

Plaintiff,

vs.

Case No. 2016-1197-CB

BARBARA FRY, DENNIS
BAKER, and JP MORGAN CHASE,

Defendants.

OPINION AND ORDER

Plaintiff has filed a motion for a default judgment against Defendant JP Morgan Chase ("Defendant Chase").

I. Factual and Procedural History

Plaintiff is a painting contractor. Defendant Barbara Fry ("Defendant Fry") is allegedly one of Plaintiff's former employees. From July 2014 to August 2015, Defendant Fry allegedly made out some of Plaintiff's checks to Plaintiff's employees and then forged their signatures and then had Defendant Dennis Baker ("Defendant Baker") cash them at one or more of Defendant Chase's branches.

On April 11, 2016, Plaintiff filed its complaint in this matter ("Complaint"). The Complaint contains claims for: Count I- Conversion, Count II- Unjust Enrichment, Count III- Forgery/Fraud, and Count IV-Aiding and Abetting Conversion, Breach of Fiduciary Duty and Negligence. On September 26, 2016, Plaintiff obtained defaults against Defendant Chase and Defendant Baker. On October 31, 2016, Plaintiff filed its instant motion for a default judgment against Defendant Chase. On November 7, 2016, the

Court held a hearing in connection with the motion and took the matter under advisement.

II. Arguments and Analysis

In this case, the principal issue is whether Plaintiff served Defendant Chase with the summons and Complaint in accordance with the Michigan Court Rules. Plaintiff avers that it served Defendant Chase pursuant to MCR 2.105(D)(2). MCR 2.105(D)(2) provides:

(D) Private Corporations, Domestic and Foreign. Service of process on a domestic or foreign corporation may be made by

(2) serving a summons and a copy of the complaint on the last presiding officer, president, cashier, secretary, or treasurer of a corporation that has ceased to do business by failing to keep up its organization by the appointment of officers or otherwise, or whose term of existence has expired;

Accordingly, in order to satisfy MCR 2.105(D)(2) Plaintiff was required to personally serve a copy of the summons and Complaint on a director, trustee, or person in charge of an office or business establishment of the corporation and send a summons and a copy of the Complaint by registered mail, addressed to the principal office of the corporation. *Holliday v. Townley*, 189 Mich App 424, 425-426; 473 NW2d 733 (1991). In this case, Plaintiff has provided evidence that its counsel sent a summons and a copy of the Complaint to Defendant's Chase's principal office via certified mail. (See Plaintiff's Exhibit 2.) However, Plaintiff has not provided any evidence that it also personally served a copy of the summons and Complaint on a director, trustee, or person in charge of an office or business establishment of Defendant Chase. Accordingly, Plaintiff has failed to demonstrate that it properly served

Defendant Chase with the summons and Complaint in this case. As a result, Plaintiff's motion for a default judgment must be denied.

Conclusion

Based upon the reasons set forth above, Plaintiff's motion for a default judgment against Defendant Chase is DENIED. In compliance with MCR 2.602(A)(3), the Court states this Opinion and Order does not resolve the last claim and does not close the case.

IT IS SO ORDERED.

Date: DEC 08 2016

Kathryn A. Viviano
Hon. Kathryn A. Viviano, Circuit Court Judge