

STATE OF MICHIGAN

SIXTEENTH JUDICIAL CIRCUIT COURT

TM PARTRIDGE CREEK MALL, L.P.,
A Delaware Limited Partnership,

Plaintiff,

Case No. 2019-2750-CB

vs.

17240 LC, LLC, a Delaware limited liability
Company n/k/a 17240 Hall, LLC, a Michigan
Limited liability company d/b/a BLACKFINN
AMERIPUB; and BLACKFINN JAX, LLC, a
Florida limited liability company,
Jointly & Severally,

Defendants.

OPINION AND ORDER

This matter is before the Court on Plaintiff TM Partridge Creek Mall, L.P.'s "motion for entry of default judgment as to all defendants, jointly and severally."

I. Background

On July 12, 2019, Plaintiff TM Partridge Creek Mall, L.P. ("Partridge Creek") initiated the instant action against Defendants 17240 LC, LLC, a Delaware limited liability company n/k/a 17240 Hall, LLC, a Michigan limited liability company d/b/a Blackfinn Ameripub ("Blackfinn Ameripub") and Blackfinn Jax, LLC ("Blackfinn Jax"), a Florida limited liability company, alleging claims for breach of contract and breach of guaranty. On October 6, 2019, Partridge Creek filed a proof of service averring that Blackfinn Ameripub was "served by registered or certified mail" "a copy of the summons and complaint" via its registered agent, The Corporation Company, a Michigan corporation, on July 29, 2019. The signature block on the attached return receipt was stamped "THE

CORPORATION COMPANY” but did not provide the printed name of the person who received it. The certified mail was not sent “restricted delivery.” On October 6, 2019, Partridge Creek also filed a proof of service averring that Blackfinn Jax was “served by registered or certified mail (copy of return receipt attached) a copy of the summons and complaint” via its registered agent, CT Corporation System, a Delaware corporation, on July 30, 2019. The signature block on the attached return receipt was stamped “CT CORPORATION” but did not provide the printed name of the person who received it. The certified mail was not sent “restricted delivery.”

On September 5, 2019, the court clerk entered defaults against Blackfinn Ameripub and Blackfinn Jax “for failure to plead or otherwise defend as provide by law.” On September 6, 2019, Partridge Creek filed proofs of service averring that it served Blackfinn Ameripub and Blackfinn Jax via their registered agents with a notice of entry of default. On December 26, 2019, Partridge Creek filed the instant motion for entry of default judgment as to all defendants, jointly and severally. On the same date, Partridge Creek served its motion for entry of default judgments on Blackfinn Ameripub and Blackfinn Jax via their registered agents.

On January 13, 2020, the Court held a hearing on Partridge Creek’s motion but adjourned the matter to allow Partridge Creek to submit a supplemental brief addressing whether Defendants had been properly served with the summons and complaint. On January 17, 2020, Partridge Creek filed a supplemental brief. On January 27, 2020, the Court heard Partridge Creek’s argument and took the matter under advisement. On January 30, 2020, Partridge Creek filed a second supplemental brief.

II. Law & Analysis

"A trial court's authority to enter a default or default judgment against a party must fall within the parameters of the authority conferred under the court rules." *Kornak v Auto Club Ins Ass'n*, 211 Mich App 416, 420; 536 NW2d 553 (1995). Failure to properly serve a defendant with a summons and complaint deprives the trial court of personal jurisdiction, and the court is left without legal authority to render a judgment. *Alycekay Co v Hasko Construction Co, Inc*, 180 Mich App 502, 505-506; 448 NW2d 43 (1989); see also *Dogan v Michigan Basic Prop Ins Ass'n*, 130 Mich App 313, 320; 343 NW2d 542 (1983).

"Service-of-process rules are intended to satisfy the due process requirement that a defendant be informed of the pendency of an action by the best means available, by methods reasonably calculated to give a defendant actual notice of the proceeding and an opportunity to be heard and to present objections or defenses." *Bunner v Blow-Rite Insulation Co*, 162 Mich App 669, 673-674; 413 NW2d 474 (1987). "The court rules do not address the proper manner of service on a limited liability company." *Bullington v Corbell*, 293 Mich App 549, 558; 809 NW2d 657 (2011). While the MCR 2.105(D) sets forth the requirements to serve a private corporation, limited liability companies "are not corporations under Michigan law." *Alliance Obstetrics & Gynecology v Dep't of Treasury*, 285 Mich App 284, 288; 776 NW2d 160 (2009). Indeed, the Michigan Limited Liability Company Act ("LLCA") defines a "corporation" or "domestic corporation" as a "corporation formed under the business corporation act," MCL 450.1101 *et seq.*

However, MCL 450.4207(1)(b) requires a limited liability company ("LLC") to "have and continuously maintain" a "registered agent," which may include a domestic or

foreign corporation. “The resident agent appointed by a limited liability company is an agent of the company upon whom any process, notice, or demand required or permitted by law to be served upon the company may be served.” MCL 450.4207(2). The LLCA provides that if “the agent for service of process cannot be found or served through the exercise of reasonable diligence, service of service of process may be made by delivering or mailing by registered mail to the administrator a summons and copy of the complaint.” MCL 450.4207(4). “Administrator” means “the director of the department or his or her designated representative.” MCL 450.4102(2)(a). The “Department” is defined as “the department of licensing and regulatory affairs.” MCL 450.4102(2)(f).

Under MCR 2.105(H), “[s]ervice of process on a defendant may be made by serving a summons and a copy of the complaint on an agent authorized by written appointment or by law to receive service of process.” While MCR 2.105(D) does not expressly apply to a LLC, the LLCA requires a LLC to appoint a resident agent, which may be a corporation, to operate as “an agent of the company upon whom any process, notice, or demand required or permitted by law to be served upon the company may be served.” See MCL 450.4207(1)(b) and (2). Because MCR 2.105(D) sets forth the requirements for the proper manner of service on a private corporation and MCL 450.4207 permits a LLC to appoint a corporation as its registered agent “upon whom any process” “permitted by law to be served upon the company may be served,” the Court is satisfied that a corporation appointed as a resident agent for a LLC must be served pursuant to MCR 2.105(D) to satisfy due process. *Bunner*, 162 Mich App at 673-674. “Compliance with the court rules fulfills the constitutional requirement of notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action

and afford them an opportunity to present their objections." *Bullington*, 293 Mich App at 556.

MCR 2.105(D) provides as follows:

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

(1) serving a summons and a copy of the complaint on an officer or the resident agent;

(2) serving a summons and a copy of the complaint on a director, trustee, or person in charge of an office or business establishment of the corporation and sending a summons and a copy of the complaint by registered mail, addressed to the principal office of the corporation;

(3) 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;

(4) sending a summons and a copy of the complaint by registered mail to the corporation or an appropriate corporation officer and to the Michigan Bureau of Commercial Services, Corporation Division if

(a) the corporation has failed to appoint and maintain a resident agent or to file a certificate of that appointment as required by law;

(b) the corporation has failed to keep up its organization by the appointment of officers or otherwise; or

(c) the corporation's term of existence has expired.

In *Bullington*, the plaintiff brought an action against Craig Corbell, an individual, Hunter Homes, Inc., a corporation, and ChrisJack Properties, LLC, a limited liability company. *Bullington*, 293 Mich App at 551. Corbell served as the resident agent for both Hunter Homes, Inc. and ChrisJack Properties, LLC. *Id.* at 552. The plaintiff's counsel served all three defendants by certified mail without restricted delivery. *Id.* at 553, 557.

The *Bullington* Court observed that “[w]ith regard to private corporations, the court rules require personal service on an officer, registered agent, director, trustee, or person in charge of an office or business establishment.” *Id.* at 557 (citing MCR 2.105(D)(1) and (2)). Further, the Court stated that “[i]f service is made by serving a summons and copy of the complaint on a director, trustee, or person in charge of an office or business establishment, the plaintiff must also send a summons and complaint ‘by registered mail, addressed to the principal office of the corporation.’” *Id.* The Court noted that although a “plaintiff may employ registered mail to serve process when a corporation ‘has failed to appoint and maintain a registered agent’ under MCR 2.105(D)(4)(a), there was no evidence that Hunter Homes, Inc. ‘failed to appoint or maintain a registered agent.’” *Id.* at 557-558. With respect to ChrisJack Properties, LLC, the *Bullington* Court opined that “[t]he court rules do not address the proper manner of service on a limited liability company.” *Id.* at 558. After citing MCR 2.105(H)(1) and MCL 450.4207(2), the Court held that “[t]he court rules simply do not contemplate that a plaintiff may use certified mail as an initial form of service on corporate entities of any kind,” including a LLC. *Id.*

Here, Partridge Creek asks the Court to enter a default judgment against Blackfinn Ameripub and Blackfinn Jax, two limited liability companies. Blackfinn Ameripub’s registered agent is The Corporation Company, a Michigan corporation. Blackfinn Jax’s registered agent is CT Corporation System, a Delaware corporation. For the reasons described above, in order to effectuate service of process on Blackfinn Ameripub and Blackfinn Jax, Partridge Creek was required to serve The Corporation Company and CT Corporation System pursuant to MCR 2.105(D).

It is undisputed that Partridge Creek mailed copies of the summons and complaint to defendants registered agents, The Corporation Company and CT Corporation System, by certified mail. However, the “court rules simply do not contemplate that a plaintiff may use certified mail as an initial form of service” on a corporation or LLC. *Bullington*, 293 Mich App at 558. This manner of service is not sufficient to effectuate service under MCR 2.105(D) and plaintiff has failed to persuade the Court that it satisfies basic due process requirements of notice and an opportunity to be heard.

Because the Court’s authority to enter a default judgment against Blackfinn Ameripub and Blackfinn Jax is confined to the parameters conferred under the Michigan Court Rules, Partridge Creek’s failure to properly serve Defendants deprives the Court of personal jurisdiction and legal authority to render a judgment. *Kornak*, 211 Mich App at 420; *Alycekay*, 180 Mich App at 505-506; *Dogan*, 130 Mich App at 320. Therefore, Partridge Creek’s motion for entry of default judgments against Defendants, jointly and severally, is properly denied.

Moreover, because Blackfinn Ameripub and Blackfinn Jax were not served as provided in MCR 2.103 and MCR 2.105, the summons issued against them expired on October 11, 2019. See MCR 2.102(A) and (D). If the plaintiff fails to obtain an order permitting a second summons to issue within 91 days after the date the complaint is filed, “the action is deemed dismissed without prejudice as to a defendant who has not been served with process.” MCR 2.102(E)(1). Consequently, Partridge Creek’s action against Blackfinn Ameripub and Blackfinn Jax is properly dismissed without prejudice.

III. Conclusion

For the reasons set forth above, Partridge Creek’s motion for entry of default

judgment is DENIED and its complaint is DISMISSED WITHOUT PREJUDICE. Pursuant to MCR 2.602(A)(3), this *Opinion and Order* resolves the last pending claim and closes the case.

IT IS SO ORDERED.

Dated: **02/14/20**

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

