

STATE OF MICHIGAN  
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

LM INSURANCE CORPORATION,

Plaintiff,

Case No. 18-05377-CBB

vs.

HON. CHRISTOPHER P. YATES

TMF TRANSPORTATION, LLC,

Defendant.

OPINION AND ORDER GRANTING DEFENDANT’S MOTION TO SET ASIDE  
DEFAULT AND DEFAULT JUDGMENT AND TO QUASH GARNISHMENT

A bedrock principle of due process mandates that a trial court cannot enter a valid judgment without first obtaining personal jurisdiction over the defendant “by service of process[.]” Lawrence M Clarke, Inc v Richco Construction, Inc, 489 Mich 265, 274 (2011), and when it comes to service of process, precision is essential. Here, Plaintiff LM Insurance Corporation (“LM”) filed suit against a limited liability company, TMF Transportation, LLC (“TMF”), to obtain insurance premiums, but LM served process by consulting the rules governing service upon corporations, see MCR 2.105(D), as opposed to the rules governing service upon limited liability companies. See MCR 2.105(H)(1). In November 2018, LM obtained a default and default judgment in the amount of \$59,109.14 against TMF, but TMF subsequently moved to set aside that default and default judgment based upon LM’s failure to complete service of process in accordance with the correct Michigan Court Rule. Because the rule for service upon corporations does not govern service upon limited liability companies, see Bullington v Corbell, 293 Mich App 549, 557-558 (2011), and LM failed to satisfy the requirements for serving a limited liability company, the Court must set aside the default and default judgment.

On June 18, 2018, Plaintiff LM filed this routine collection action against Defendant TMF. LM also obtained a summons from the clerk, and then LM attempted to serve TMF. According to the proof of service filed on November 7, 2018,<sup>1</sup> LM's process server "served personally a copy of the summons and complaint" on August 3, 2018, upon "Armin Hirkic, Dispatch Manager" for TMF at "3056 Eastern Avenue, Ste B, Grand Rapids, MI 49508[.]" Then, on "8/23/18," the legal assistant to LM's attorneys sent the summons and complaint "via Certified Mail Return Receipt Requested" to "Tmf Transportation Llc, ATTN: TIJS VAN LIER" at "3056 Eastern Ave STE B, Grand Rapids, Michigan, 49508." Those two acts in combination appeared to satisfy the requirements for service of process "on a domestic or foreign corporation" under MCR 2.105(D)(2), which provides that any corporation may be haled into court by serving the summons and 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." Unsurprisingly, then, the clerk entered a default at the behest of LM and the Court thereafter signed the default judgment in the amount of \$59,109.14 on November 19, 2018.

As day follows night, the entry of the default judgment was followed by collection efforts, including garnishments, which predictably drew the attention of Defendant TMF. In May of 2020, more than one year after the entry of the default judgment, TMF moved to set aside the default and the default judgment. The motion came too late to rely upon most of the provisions in the Michigan Court Rules for obtaining relief from a default and default judgment. See, e.g., MCR 2.603(D)(2)(b) (authorizing "motion to set aside a default or a default judgment, except when grounded on lack of

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<sup>1</sup> The original summons was due to expire on September 17, 2018, see MCR 2.102(D), but before the expiration of the original summons, the Court granted Plaintiff LM's motion for a second summons, which did not expire until December 17, 2018.

jurisdiction over the defendant, . . . within 21 days after the default judgment was entered”); MCR 2.612(B) (allowing motion for relief “from the judgment, order, or proceedings for which personal jurisdiction was necessary” to be filed “within 1 year after final judgment”). But as TMF correctly observes, MCR 2.603(D)(1) carves out an exception for a motion to set aside a default or a default judgment “grounded on lack of jurisdiction over the defendant” and MCR 2.612(C) “does not limit the power of a court . . . to grant relief to a defendant not actually personally notified” of the action “as provided in” MCR 2.612(B) referring to “personal jurisdiction [being] necessary and acquired[.]” See MCR 2.612(C)(3). Thus, TMF may attack the default and default judgment even at this late date if TMF can establish a lack of personal jurisdiction based upon defective service of process.

To be sure, MCR 2.105(D) defines methods for serving process upon “private corporations, domestic and foreign.” Plaintiff LM asserts that it complied with one of the options for service of process upon private corporations in serving Defendant TMF. See MCR 2.105(D)(2). But that court rule does not govern service of process upon limited liability companies. Bullington, 293 Mich App at 557-558. The Michigan Court Rules “do not address the proper manner of service on a limited liability company[.]” see id. at 558, but MCR 2.105(H)(1) “permits service of process on ‘an agent authorized by written appointment or by law to receive service of process.’” Id. “‘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.’” Id., quoting MCL 450.4207(2). The resident agent for TMF is Tijs Van Lier, see Motion to Set Aside and for Relief from Default and Default Judgment, Exhibit A (Affidavit of Facts of Tijs Van Lier, ¶ 3), whose “address as the resident agent has been listed as 4295 Haralson Court, Grand Rapids, MI 49546.” Id. (Affidavit of Facts of Tijs Van Lier, ¶ 4). LM did not personally serve the summons and

complaint upon Tijs Van Lier, nor did LM send the summons and complaint to him by certified mail at the address on Haralson Court.<sup>2</sup> As a result, LM failed to obtain personal jurisdiction over TMF by serving the summons and complaint in a manner prescribed by the Michigan Court Rules.<sup>3</sup> Thus, the Court must grant TMF's motion to set aside the default and default judgment in this case,<sup>4</sup> and concomitantly quash all outstanding garnishments predicated upon the default judgment.

IT IS SO ORDERED.

Dated: June 24, 2020



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HON. CHRISTOPHER P. YATES (P41017)  
Kent County Circuit Court Judge

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<sup>2</sup> Even if Plaintiff LM insists that it accomplished service of the summons and complaint by sending those documents “on 8/23/18” *via* certified mail to Tijs Van Lier at 3056 Eastern Avenue, Suite B, Grand Rapids, Michigan 49508, the Michigan 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.” See Bullington, 293 Mich App at 558.

<sup>3</sup> The Court recognizes that excepting limited liability companies from MCR 2.105(D), which prescribes the methods for serving private corporations, creates a potential trap for the unwary. But the Court has neither the discretion nor the inclination to reject the analysis of our Court of Appeals in Bullington, 293 Mich App at 557-558, which clearly treats limited liability companies as beyond the ambit of MCR 2.105(D). Although it might be sensible to expand MCR 2.105(D) to apply to limited liability companies as well as private corporations, the Court lacks the authority to write that change into the Michigan Court Rules.

<sup>4</sup> Granting that relief does not end this case. Instead, the Court shall treat the case as an open file until one party or the other successfully moves for summary disposition, obtains a judgment, or notifies the Court of a settlement through the submission of a proposed order of dismissal.