NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

CHATHAM BAY CONSTRUCTION, LLC	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
KELLY MARIE DONNELLY, AND 25 FATHOMS INTERNATIONAL, INC. D/B/A BLUE HORIZONS, AND CHRISTOPHER DONNELLY	:	No. 2467 EDA 2024
APPEAL OF: KELLY MARIE DONNELLY, AND 25 FATHOMS INTERNATIONAL, INC. D/B/A BLUE HORIZONS	:	

Appeal from the Order Entered August 14, 2024
In the Court of Common Pleas of Delaware County Civil Division at
No(s): CV-2021-008627

BEFORE: LAZARUS, P.J., BECK, J., and STEVENS, P.J.E.*

MEMORANDUM BY BECK, J.: **FILED APRIL 29, 2025**

Kelly Marie Donnelly ("Donnelly") and 25 Fathoms International, Inc. d/b/a Blue Horizons ("25 Fathoms") (together, "Appellants") appeal from the order entered by the Delaware County Court of Common Pleas ("trial court"), denying their petition to open/strike a default judgment entered in favor of Chatham Bay Construction, LLC ("Chatham"). Appellants claim that the trial court erred in failing to open or strike the judgment because of defective

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* Former Justice specially assigned to the Superior Court.

service of process. After careful review, we conclude that the trial court erred in failing to strike the default judgment, and therefore reverse.

In June 2018, Christopher Donnelly ("Christopher"), Donnelly's now ex-husband, and at that time a minority owner of 25 Fathoms, entered into a verbal contract with Jay Freebery, President of Chatham, for the performance of construction and renovation work at 16 Wilmington West Chester Pike, Chadds Ford, Pennsylvania 19317, which served as one of 25 Fathoms' business addresses. Donnelly was not a party to the contract, despite being the majority owner of 25 Fathoms at the time. Chatham performed $152,709.22 worth of work through March 2019. Upon completion of the work, there was an outstanding balance of $110,709.22. On January 27, 2020, Donnelly become the sole owner of 25 Fathoms. On January 30, 2020, despite no longer being an owner of 25 Fathoms, Christopher executed a promissory note in favor of Chatham for $86,000 plus interest. Christopher did not make any payments on the note.

On October 14, 2021, Chatham initiated suit by filing a praecipe for writs of summons against Donnelly, Christopher, and 25 Fathoms. A sheriff served the writ on 25 Fathoms at the 16 Wilmington West Chester Pike address, and noted that Donnelly accepted service. The sheriff served Christopher at 3214 Goodley Road, Garnet Valley, Pennsylvania 19060. Chatham subsequently reissued the writ two times.

On October 25, 2023, Chatham filed its complaint against Appellants and Christopher, alleging claims for breach of contract and quantum meruit.[1] Chatham served the complaint on Appellants at 3215 Goodley Road. An unknown individual signed the USPS return receipt card at the 3215 Goodley Avenue address—a location where no party resided or worked.[2] Notably, Christopher resided at 3214 Goodley Road, and Donnelly had previously lived at 3214 Goodley Road, but had not since September or October 2018, when the parties separated.

On January 23, 2024, Chatham filed a notice of intent to file for default judgment against 25 Fathoms, in care of Donnelly.[3] Chatham sent the notice to 3215 Goodley Road. At some point, Chatham discovered that the 3215 Goodley Road address was incorrect and that the current address of 25 Fathoms was 1812 Marsh Road, Wilmington, DE 19810. On February 24, 2024, Chatham resent the complaint and the notice of default, by both regular

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[1] Chatham alleges that Donnelly is liable because her mismanagement of the company led directly to the default.

[2] The signature on the return receipt was indecipherable. Chatham theorizes that the signature was provided by a neighbor or Christopher. Chatham's Brief at 4-5. Appellants seemingly agree that either Christopher or a neighbor signed the receipt. ***See*** Appellants' Brief at vii; ***see also*** Trial Court Opinion, 8/14/2024, at 3.

[3] Pa.R.Civ.P. 237.1(a)(2)(ii) requires a party seeking to file a praecipe for the entry of a default judgment to certify that a written notice of intention was mailed or delivered to the party against whom default is sought at least ten days prior to the filing of the praecipe.

and certified mail, to the 1812 Marsh Road address. On March 5, 2024, having received no response, Chatham filed a praecipe for the entry of default judgment. On March 26, 2024, Appellants filed a petition to open/strike the default judgment. The trial court held a hearing on May 29, 2024, after which it denied the petition to open/strike.[4] Appellants timely appealed.

Appellants challenge the trial court's decision to deny the motion to open/strike the default judgment entered against them "when [Chatham] did not properly conduct service of processes [sic] on [Appellants] due to mailing the Notice of Default to [Donnelly's] incorrectly named old address[.]" Appellants' Brief at vi.[5]

> An appeal regarding a petition to strike a default judgment implicates the Pennsylvania Rules of Civil Procedure. Issues regarding the operation of procedural rules of court present us with questions of law. Therefore, our standard of review is de novo and our scope of review is plenary.
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> A petition to strike a judgment is a common law proceeding which operates as a demurrer to the record. A petition to strike a judgment may be granted only for a fatal defect or irregularity

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[4] Notably, the trial court entered default judgment against Christopher after he failed to respond to Chatham's complaint. Christopher filed a petition to strike the default judgment entered against him because he was not served with a notice of intent to file a default judgment. Christopher averred that the notice was sent to 3215 Goodley Road, rather than his actual address at 3214 Goodley Road. The trial court found notice was ineffective, and this constituted a fatal defect on the face of the record. Trial Court Opinion, 8/14/2024, at 3. Thus, the trial court granted Christopher's petition to strike the default judgment. ***Id.***

[5] Although interlocutory, "[a]n appeal may be taken as of right from … [a]n order refusing to open, vacate or strike off a judgment." Pa.R.A.P. 311(a)(1); ***Keller v. Mey***, 67 A.3d 1, 3 (Pa. Super. 2013).

> appearing on the face of the record. A petition to strike is not a chance to review the merits of the allegations of a complaint. Rather, a petition to strike is aimed at defects that affect the validity of the judgment and that entitle the petitioner, as a matter of law, to relief. A fatal defect on the face of the record denies the prothonotary the authority to enter judgment. When a prothonotary enters judgment without authority, that judgment is void ab initio. When deciding if there are fatal defects on the face of the record for the purposes of a petition to strike a default judgment, a court may only look at what was in the record when the judgment was entered.

Penn Nat'l Mut. Cas. Ins. Co. v. Phillips, 276 A.3d 268, 273-74 (Pa. Super. 2022) (citations, quotation marks, brackets, and paragraph break omitted).[6] Further, "[a] litigant may seek to strike a void judgment at any time." ***Grady v. Nelson***, 286 A.3d 259, 264 (Pa. Super. 2022) (citation omitted).

This Court has long recognized that defective service presents a fatal defect justifying a petition to strike. ***See, e.g., id.***; ***Clymire v. McKivitz***, 504 A.2d 937, 939 (Pa. Super. 1986).

> [S]ervice of process[,] and our rules governing how service is accomplished[,] serve a dual purpose. In addition to being a prerequisite to investing a court with personal jurisdiction over the defendant, service of process has as its purpose notice to the named defendant that he has been brought into court as a party in a lawsuit and must take appropriate steps in defense.

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[6] Although Appellants filed a single petition seeking to strike or open the default judgment, it is well settled that petitions to strike and petitions to open are generally distinct. ***Cintas Corp. v. Lee's Cleaning Servs., Inc.***, 700 A.2d 915, 918 (Pa. 1997) (citation omitted). Since we find the notice issue dispositive, we will limit our analysis to Appellants' petition to strike.

Ferraro v. Patterson-Erie Corp., 313 A.3d 987, 999 (Pa. 2024) (citation and quotation marks omitted).

"Service of process is a mechanism by which a court obtains jurisdiction of a defendant, and therefore, the rules concerning service of process must be strictly followed." ***Trexler v. McDonald's Corp.***, 118 A.3d 408, 412 (Pa. Super. 2015) (citation omitted). Original process may be served, among other ways, "by handing a copy to the defendant[,]" Pa.R.Civ.P. 402(a)(1), or by handing a copy to a specified person at a specified location, like "an adult member of the family with whom [the defendant] resides" at the defendant's residence, Pa.R.Civ.P. 402(a)(2)(i), or the defendant's agent "at any office or usual place of business of the defendant[,]" Pa.R.Civ.P. 402(a)(2)(iii). These strict requirements only apply to the service of original process. Pa.R.Civ.P. 402(a). For "all legal papers other than original process …[,]" and when there is no attorney of record, "service shall be made by handing a copy to the party or by mailing a copy to or leaving a copy for the party at the address endorsed on an appearance or prior pleading or the residence or place of business of the party[.]" Pa.R.Civ.P. 440(a)(1), (2)(i).

When an action is commenced by writ of summons, the writ of summons itself constitutes original process, and the complaint can then be served under the standard set forth for other legal papers in Rule 440. ***See*** Pa.R.Civ.P. 401(b)(5) ("If an action is commenced by writ of summons and a complaint is thereafter filed, the plaintiff, instead of reissuing the writ, may treat the

complaint as alternative original process and as the equivalent for all purposes of a reissued writ[.]"). Although the standard for service of other legal papers is less rigorous than the requirements for service of original process contained in Rule 402, the need for proper service is no less pressing. ***See Grady***, 286 A.3d at 264 ("One of the fundamental objectives of the Rules of Civil Procedure is to ensure that litigants receive proper notice of all proceedings. The duty to make proper service begins with service of original process … [and] continues throughout all stages of the case.") (citation omitted).

Appellants argue the trial court's order denying their petition to strike must be reversed because they were not properly served with the complaint. Appellants' Brief at xviii. Appellants contend that service of the complaint at the incorrect 3215 Goodley address rendered the notice defective, regardless of whether Christopher or someone else signed the return card. ***Id.*** at xviii-xxi. Appellants further observe that the notice of intent to seek default judgment was also sent to the incorrect address. ***Id.*** at xx-xxi. Appellants acknowledge that Chatham eventually served the complaint and the notice at the correct address, but still submit that the service of the complaint and notice were ineffective. ***Id.*** at xxi.

In contrast, Chatham argues that because Appellants already had notice of the action by service of the writ of summons (which was properly served on Donnelly by the sheriff), service of process at the incorrect 3215 Goodley address was sufficient because Chatham "substantial[ly] compli[ed]" with the

rules for service of process. Chatham's Brief at 9-10. More specifically, Chatham argues that substantial compliance was achieved because Appellants (1) had a "sufficient connection" with the person who signed the USPS return of service card such that "service was reasonably calculated to give … [Appellants] notice," ***id.*** at 10-11 (quoting ***Cintas***, 700 A.2d at 920), and (2) the 3215 Goodley address "closely approximate[d]"[7] the real address of 3214 Goodley, ***id.*** at 11-12. Chatham's "sufficient connection" argument relies on ***Aquilino v. Philadelphia Catholic Archdiocese***, 884 A.2d 1269 (Pa. Super. 2005), for the proposition that anyone who signs a USPS return of service card is deemed an agent; and, because an agent would be sufficiently connected to Appellants, Chatham would be one step closer to substantial compliance. ***See*** Chatham's Brief at 10-11. Chatham argues that this, coupled with the fact that the 3215 Goodley address closely approximated the correct 3214 Goodley address, renders its service substantially compliant. ***Id.*** at 10-11.

The trial court adopted a similar interpretation, finding service of the complaint to be sufficient because an "agent" signed the USPS return of

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[7] Chatham cites ***Oguejiofor v. Sgagias***, 285 A.3d 968, *4 (Pa. Super. 2022) (non-precedential decision), for the notion that service to an incorrect address which closely approximates the correct address can allow for a finding of substantial compliance, ***see*** Chatham's Brief at 11-12. Troublingly, this phrase is nowhere to be found in the case. Instead, that case stands for the proposition that minor typographical errors which do not prevent process from arriving at the correct address are not fatal to proper service. ***Oguejiofor***, 285 A.3d at *3-4.

service card, notwithstanding the fact that it was mailed to the incorrect address. ***See*** Trial Court Opinion, 8/14/2024, at 3. Relying on ***Aquilino***, the trial court found that "agency can be inferred through an agent's action of accepting a complaint at a defendant's address, even if the agent's identity is unknown." ***Id.***

At the outset, it is critical to clarify the service requirements applicable to Chatham's complaint and the Rule 237 notice. Chatham's complaint is not original process under these facts because Chatham commenced the action by filing a writ of summons, and effectuated proper service of that writ on Appellants; thus, the complaint here qualifies as a legal paper under Rule 440. ***See*** Pa.R.Civ.P. 401(b)(5). Accordingly, per Rule 440, Chatham was only required to mail a copy of the complaint to the "residence or place of business" of Appellants. ***See*** Pa.R.Civ.P. 440(a)(2)(i).

Neither occurred here. Thus, under a plain reading of Rule 440, service of process was not properly effectuated. Chatham initially sent a copy of the complaint by both regular and certified mail to 3215 Goodley Road. It is undisputed that 3215 Goodley Road was not the "residence or place of business" of Appellants. ***Id.*** Accordingly, Chatham did not comply with the rules, and we conclude that service at an incorrect address was insufficient to confer notice. ***See Grady***, 286 A.3d at 264-65 (holding that the trial court erred in failing to strike the judgment where a complaint and ten-day notice of intent to enter default judgment, both forms of non-original process, were

served at a non-existent address); ***Brown v. Great Atl. & Pac. Tea Co.***, 460 A.2d 773, 776 (Pa. Super. 1983) (finding that the trial court abused its discretion by failing to open a default judgment where the ten-day notice was sent to an address from which the defendant had moved one year before, and from which mail was no longer forwarded to the defendant).

We further find the reliance by Chatham and the trial court on ***Aquilino*** to be misplaced. There, a lawsuit was brought against a priest for sexual abuse. ***Aquilino***, 884 A.2d at 1273-74. At the time the lawsuit was filed, the priest lived in Peru. ***Id.*** at 1274. The trial court entered a default judgment against the priest after he failed to respond to the plaintiff's complaint, which was delivered via Federal Express to a Peruvian address provided by the Archdiocese of Philadelphia. ***Id.*** at 1274, 1279, 1281. On appeal, this Court only addressed the issue of whether the front desk receptionist who signed for the process at the Peruvian address was an authorized agent under Rule 402 after finding that the Peruvian address was in fact where the priest resided. ***Id.*** at 1283.

Even assuming that the trial court is correct that ***Aquilino*** stands for the proposition that "agency can be inferred through an agent's action of accepting a complaint at a defendant's address, even if the agent's identity is unknown[,]" ***see*** Trial Court Opinion, 8/14/2024, at 3, it ignored the critical fact that the process in ***Aquilino*** was mailed to the correct address.

Chatham's interpretation of ***Aquilino*** is similarly flawed. According to Chatham, "a person signing a return U.S. Mail Certified Mail receipt is deemed acting as [an] agent for purposes of service by mail." Chatham's Brief at 11. Because "there must be a sufficient connection between the person served and the defendant to demonstrate that service was reasonably calculated to give the defendant notice of the action against it[,]" ***Cintas***, 700 A.2d at 920, and such an agency relationship would presumably count as a sufficient connection, Chatham argues it achieved substantial compliance with the service requirements. ***See*** Chatham's Brief at 10-11. Putting aside the fact that the "sufficient connection" language from ***Cintas*** was dicta, ***see Trexler***, 118 A.3d at 412, and assuming arguendo that ***Aquilino*** can be read as stating that anyone who signs a return of service card attains the status of an agent, ***see*** Chatham's Brief at 11, Chatham's argument fails on the same fundamental level as the trial court's holding: service at an improper address, as a threshold matter, is defective. ***See Grady*** 286 A.3d at 264-65; ***Brown***, 460 A.2d at 776.

The clear and unambiguous language of Rule 440 compels the conclusion that the mailing of non-original process to an address that is not the "residence or place of business" of the defendant, Pa.R.Civ.P. 440(a)(2)(i),

is not sufficient to place the defendant on notice, even if someone signed for it.[8]

Chatham's invocation of substantial compliance, close approximation, and other theories that would validate defective service that is nonetheless "reasonably calculated"[9] to provide notice are unavailing and unsupported by our case law. Although Rule 126 provides that courts may excuse "error[s] or defect[s] of procedure which do[] not affect the substantial rights of the parties[,]" Pa.R.Civ.P. 126, we have never excused a party's failure to send process to the correct address. ***See Grady***, 286 A.3d at 264-65; ***see also Lerner v. Lerner***, 954 A.2d 1229, 1237 (Pa. Super. 2008) (noting "improper service is not merely a procedural defect that can be ignored when a defendant subsequently learns of the action against him or her") (citation omitted).

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[8] We note that under Rule 440, if service cannot be made at the party's residence or place of business, "service shall be made by leaving a copy at or mailing a copy to the last known address of the party to be served." Pa.R.Civ.P. 440(a)(2)(ii). Chatham did not fulfill this requirement, as it sent the complaint to an address that was not associated with Appellants.

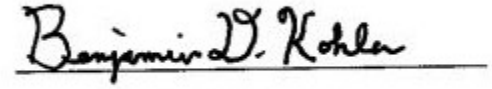
[9] The standard of reasonable calculation is not a freestanding test that can be applied to validate defective service of process. That phrase appears in Pennsylvania's long-arm statute. 42 Pa.C.S. § 5323 ("When the law of this Commonwealth authorizes service of process outside this Commonwealth, the service, when reasonably calculated to give actual notice may be made[.]"); ***see also Romeo v. Looks***, 535 A.2d 1101, 1105 (Pa. Super. 1987) (identifying the reasonable calculation standard as applicable to substitute service authorized under § 5323).

Therefore, we conclude that the trial court abused its discretion in denying Appellants' petition to strike, and reverse the trial court's order.

This, however, does not end our analysis, as Chatham ultimately sent the complaint and the notice to the correct address at 1812 Marsh Road. Notably, Chatham properly served the complaint on Appellants on February 24, 2024, and attached a notice to plead, which provided Appellants with twenty days to file a responsive pleading. ***See*** Pa.R.Civ.P. 1026(a). Nevertheless, Chatham waited only ten days before filing a praecipe for the entry of default judgment. By granting Chatham the relief it requested only ten days after it filed and served the complaint, the trial court deprived Appellants of any opportunity to defend against it as the Pennsylvania Rules of Civil Procedure require. ***See id.*** Upon remand, Appellants must be given twenty days to file a responsive pleading to Chatham's properly served complaint.

Order reversed. Case remanded with instructions. Jurisdiction relinquished.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 4/29/2025