

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY

ARROW FINANCIAL SERVICES,	)	
LLC, Assignee of Providian Bank,	)	
	)	
Plaintiff,	)	
	)	
v.	)	C.A. No. 02-10-750
	)	Nonarbitration
JACKIE A. AJAVON,	)	
	)	
Defendant.	)	

Submitted: June 16, 2003  
Decided: July 29, 2003

**ORDER ON DEFENDANT’S MOTION  
TO VACATE DEFAULT JUDGMENT**

COMES NOW, the Court finds as follows:

1. On October 28, 2002, plaintiff, Arrow Financial Services, LLC, Assignee of Providian Bank (hereinafter referred to as “Arrow”) filed a complaint against defendant seeking the sum of \$3,694.19 for the balance due on a revolving account;
2. On December 2, 2002, plaintiff filed an affidavit of return indicating personal service was made on the defendant on November 18, 2002, at 104 E. 42<sup>nd</sup> Street, Wilmington, Delaware. The person identified as served was

described as a Black female, black hair, brown eyes, 5 feet 6 six inches, 145 pounds and age 31;

3. On January 21, 2003, plaintiff filed an affidavit for a default judgment pursuant to Court of Common Pleas Civil Rule 55(b)(1). Therefore, under the Rule, since defendant failed to file an answer, a default judgment was entered by the Clerk in the total amount of \$4,887.96.

4. A Writ of Attachment was issued by the Court on March 20, 2003 and returned on April 21, 2003 attaching the wages of the defendant to satisfy the default judgment.

5. On April 25, 2003, defendant filed a motion to vacate the default judgment. Defendant alleges in the motion that she was not the person who incurred the debt, and thereby was not responsible for the amounts in the judgment. A hearing was scheduled in the Court of Common Pleas on May 30, 2003, on defendant's motion to vacate the default judgment. During that motion, the defendant argued that she was never served with the complaint, therefore, the Court never had jurisdiction to enter the default judgment.

6. The Court scheduled a subsequent hearing to determine the sufficiency of services, which was held on June 16, 2003.

7. A hearing was held on June 16, 2003, where the special process server, Wendell Walker, testified. At the beginning of the proceedings, plaintiff acknowledged that defendant was not personally served as indicated on the return but that the summons was left at defendant's place of abode, with the

person described. The process server testified that he left the complaint with a Black female with the description as set forth on the return, at a house that had a red door.

8. The provisions of Rule 4(f), which is applicable here, provide that service of summons shall be made as follows:

“Upon an individual other than an infant or incompetent person by delivering a copy of the summons, complaint and affidavit, if any, to the person individually or personally or by leaving copies thereof at the individual’s dwelling house or usual place of abode with a person of suitable age and discretion then residing therein.”

The right to question irregularities in, or sufficiency of, service of process is well settled in Delaware. The Sheriff return is prima facie proof of proper service, but plaintiff did not serve process by Sheriff. Alston v. Dipasquale, et al., 2001 WL 34083824 Del. Super., Order, October 19, 2001.

Plaintiff’s affidavit of return to the Court indicates that service of process was made personally upon the defendant, however, at the hearing, plaintiff now concedes that such affidavit as filed by the Court is not accurate, and that service of process was accomplished by leaving copies at the defendant’s dwelling house or usual place of abode. Therefore, I can only conclude that the return filed by the defendant is defective in that its representation of how service was accomplished is wrong. Plaintiff cannot at this late date attempt to achieve service by alternate means not set forth in the affidavit. But, this is what Plaintiff would have the Court conclude. It appears to me that failure to establish that the

defendant was served as set forth in the affidavit, put in question the sufficiency of service and subjects it to challenge. Based upon the misrepresentation of personal service, plaintiff was able to obtain a default judgment and attach defendant's wages. The proceeding is premised on defective service, for which I find insufficient under the rule.

Because service was improper, the default judgment is improper. Accordingly, the default judgment and the attachment of the defendant's wages is hereby vacated. All amounts which have been collected as a result of the attachment are to be returned. Plaintiff is to submit appropriate documents to the Court within 20 days which set forth in the amounts that have been returned to the defendant and that there has been notification to the defendant's employer that the attachment is vacated and no future amounts are to be deducted pursuant to this attachment.

SO ORDERED this 29<sup>th</sup> day of July 2003

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Alex J. Smalls  
Chief Judge

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