



2) It is well settled that a default judgment must be stricken when a defendant is able to demonstrate defective service of process.<sup>1</sup> The question before the Court, then, is whether Willis has demonstrated defective service.<sup>2</sup>

3) In his motion, Willis indicated that he would present to the Court evidence demonstrating that Providian served the wrong person. The Court withheld decision on the motion to provide Willis the opportunity to supply information regarding service. He has now supplied an affidavit from Marian Bauer who avers that Mr. Willis was living in her home in Georgetown, Delaware from May, 1999 to February, 2001. Service purportedly was effected in December, 2000. Willis also has supplied payroll records from two employers, both of which are located in Sussex County, indicating that he was working full-time downstate at the same time he was supposedly living in Newark.

4) Providian has supplied information which suggests that Willis has been aware of the existence of the judgment against him for more than a year and that he has, in fact, made payments in satisfaction of the judgment in accordance with a negotiated payment plan. Willis acknowledges that he has made payments but claims that he has done so to protect his daughter who he believes would be revealed to be the true judgment debtor if this matter was litigated. Providian has supplied no information to rebut Willis' contention that it served the wrong individual and it is unlikely that it could do so given the fact that more than two years have passed since service was made. Providian has not questioned the veracity of the information supplied by Willis nor has it requested an opportunity to develop the factual record

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<sup>1</sup>*Richards v. Hamon*, 178 A.2d 140 (Del. 1962).

<sup>2</sup>*See Kaiser-Frazer Corp. v. Eaton*, 101 A.2d 345 (Del. 1953)(party petitioning the court to vacate default judgment bears the burden of showing "good cause" exists to justify the relief sought).

further.

5) Willis has not been diligent in his handling of this matter. Although he is entitled to some deference because he is *pro se*,<sup>3</sup> his partial payment of the debt and his frequent correspondence with Providian about the debt would lead the Court, in most cases, to conclude that the default judgment should stand and/or that Willis has waived any challenge to it. But in this case, by making a persuasive case that he was never served with process,<sup>4</sup> Willis has effectively challenged the jurisdiction of the Court of Common Pleas to enter a judgment against him in the first place.<sup>5</sup> Under these circumstances, the Court is compelled to vacate the default judgment and to return the matter to the Court of Common Pleas for further proceedings.<sup>6</sup>

6) Based on the foregoing, the motion to vacate default judgment is **GRANTED.**

**IT IS SO ORDERED.**

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<sup>3</sup>See *Draper v. The Medical Center of Delaware*, 767 A.2d 796 (Del. 2001)(Noting that *pro se* parties were entitled to greater deference by the trial court with respect to compliance to court rules of procedure).

<sup>4</sup>The Court notes that a return of service which is “complete and regular on its face is *prima facie* evidence of the facts stated thereon and strong and convincing proof is required to rebut the presumption of its verity.” *Lawson v. Lambert*, 1988 Del. Super. LEXIS 312 at \*5 (citation omitted). In this case, however, the unrebutted affidavit of Ms. Bauer, Willis’ own uncontradicted statement that he never resided at the address where service was made, and the employment records all serve to rebut the presumption of verity.

<sup>5</sup>See *Alston v. Hudson, Jones*, 748 A.2d 406 (Del. 2000)(court lacks personal jurisdiction over defendants who have not been properly served with process).

<sup>6</sup>See *Financial & Brokerage Services, Inc. v. Robinson Ins. Assoc., Inc.*, 1990 Del. Super. LEXIS 419 at \*5 (“Judgment by default should not be granted when service was improper.”)(citation omitted); *Webster v. Ferm*, 1986 Del. Super. LEXIS 1180 at \*6 (“service of process not being properly served on the defendant, the default judgment entered against the defendant is void”); Del. Super. Ct. Civ. R. 60 (b)(4)(default judgment should be vacated when “the judgment is void”).

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Judge Joseph R. Slights, III

Original to Prothonotary

cc: Stephen P. Doughty, Esquire  
Mr. Howard L. Willis