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Clerk, U.S. District Court, ILCD

**IN THE
UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
PEORIA DIVISION**

ANNUITY PLAN OF THE
INTERNATIONAL UNION OF
OPERATING ENGINEERS LOCAL
No. 649,
Plaintiff,

Case No. 1:15-cv-01381-JES-JEH

v.

ACCURATE SITE SPECIALISTS,
INC.,
Defendant.

Order

Upon reviewing the Plaintiff's Certificate of Service (Doc. 20) for the service of the Amended Complaint, the Court determines that the Defendant was not properly served. For the reasons stated in this Order, the Plaintiff is directed to personally serve the Defendant pursuant to Rule 4.

In the instant case, the Court entered an Order of Default (Doc. 7) against the Defendant. The Court further ordered the Defendant to produce specific records to the Plaintiff. At the Show Cause hearing, the Defendant was directed to produce records to the Plaintiff and the Plaintiff was required to subsequently file a status report. (ECF 05/11/16). The Plaintiff filed a status report (Doc. 17), indicating that the Defendant had provided a portion of the records. Further, the Plaintiff requested a continuance to file an amended pleading based on results of an audit on the records if necessary. On July 15, 2016, the Plaintiff filed an Amended Complaint (Doc. 19) and an accompanying Certificate of Service (Doc. 20).

Generally, service is not required “on a party who is in default for failing to appear,” except when such a pleading “asserts a new claim for relief against such a party must be served on that party under Rule 4.” Fed. R. Civ. P. 5(a)(2). According to Rule 4(e)(1), service may be effected “pursuant to the law of the state in which the district is located.” Illinois law provides that “a private corporation can be served . . . by leaving a copy of the process with its registered agent or any officer or agent of the corporation found anywhere in the State. . . .” 735 Ill. Comp. Stat. 5/2-204. Under Rule 4(h), service on a corporation is valid if it complies with Rule 4(e)(1) or a copy of the summons and the complaint is delivered “to an officer, a managing or general agent, or any agent authorized by appointment or by law to receive service of process.”

Although the Amended Complaint falls into the category of an amended pleading, the Amended Complaint contains a different prayer for relief. Specifically, the Amended Complaint asks for damages determined by the audit of the Defendant’s records. Due to the new claims in the Amended Complaint, the Court finds that Rule 4 applies, and the Plaintiff must serve the Defendant accordingly. In the Certificate of Service, the Plaintiff indicated that a copy was sent to the Defendant’s business address. This is not proper service under Rule 4, which requires personal service.

Accordingly, the Plaintiff is directed to submit summons to Clerk’s office for issuance.

It is so ordered.

Entered on October 13, 2016

s/Jonathan E. Hawley
U.S. MAGISTRATE JUDGE