

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION**

HWZ DISTRIBUTION GROUP, LLC d/b/a)	
NEXGEN BUILDING SUPPLY,)	
)	
Intervenor Plaintiff,)	
)	No. 4:15-cv-00040-TWP-DML
v.)	
)	
LIGHTHOUSE CONSTRUCTION)	
SERVICES, LLC, and)	
WILLIAM D. STRICKER a/k/a)	
DAVID STRICKER,)	
)	
Intervenor Defendants.)	

**ENTRY ON INTERVENOR PLAINTIFF'S RESUBMITTED
MOTION FOR SUMMARY JUDGMENT**

This matter is before the Court on a Motion for Summary Judgment resubmitted by Intervenor Plaintiff HWZ Distribution Group, LLC, doing business as NexGen Building Supply (“NexGen”) ([Filing No. 71](#)). NexGen again requests summary judgment against Intervenor Defendant William D. Stricker (“Stricker”), who is the sole member of Intervenor Defendant Lighthouse Construction Services, LLC (“Lighthouse”). Based on the same facts and evidence previously submitted to the Court, NexGen already has been granted summary judgment against Lighthouse ([Filing No. 57](#)). In the Court’s summary judgment Order, summary judgment was denied as to Stricker individually because he never received service of process and no attorney had entered an appearance on his behalf. *Id.* at 7.

NexGen has resubmitted its summary judgment motion, requesting judgment against Stricker individually. In the motion, NexGen asserts that Stricker has waived service of process and that Stricker, as well as his company Lighthouse, filed a responsive pleading to the Intervenor

Complaint, pointing to [Filing No. 22](#), wherein they failed to raise the defense of insufficient process ([Filing No. 71 at 2](#)).

While preparing to rule on the resubmitted motion for summary judgment, the Court discovered that NexGen has not provided evidence that Stricker waived service of process. A summons has been issued to Stricker at [Filing No. 70](#), but NexGen has not filed a return of service to indicate that Stricker actually has been served. While it appears that attorney Laurie Goetz Kemp filed an Answer to the Intervenor Complaint on behalf of both Lighthouse and Stricker (see [Filing No. 22 at 1](#)), Ms. Kemp has not filed an appearance on behalf of Stricker (see [Filing No. 11](#)), so her Answer on Stricker's behalf is ineffective.

Because of these deficiencies, the Court ordered NexGen to file proof that service has been effectuated as to Stricker or that service actually has been waived by Stricker to enable the Court to rule on the pending resubmitted motion for summary judgment. On August 9, 2017, NexGen submitted its two-sentence response to the Court's Order ([Filing No. 73](#)), explaining that "it is unable to provide proof of service of William D. Stricker, a/k/a David Stricker, as service attempted upon him was ineffective. The Sheriff indicated he could not be served." *Id.* at 2.

Because Stricker has not been served and there is no proof that he has waived service, for the reasons stated in the Court's first Order on NexGen's motion for summary judgment ([Filing No. 57 at 6–7](#)), NexGen's pending Resubmitted Motion for Summary Judgment against Stricker is **DENIED** ([Filing No. 71](#)).

Federal Rule of Civil Procedure 4(m) establishes a time limit of ninety days after a complaint is filed to effectuate service. NexGen filed its Complaint on December 9, 2015 ([Filing No. 21](#)). It has failed to effectuate service within ninety days of filing its Complaint. NexGen is **ORDERED** to effectuate service on Stricker and file proof of such service no later than

September 1, 2017. Failure to do so will result in dismissal of this action against Stricker in accordance with Rule 4(m).

This Order does not affect the entry of summary judgment in favor of NexGen and against Lighthouse in the amount of \$15,228.18 ([Filing No. 57 at 7](#)) or the award of attorney fees and costs in the amount of \$2,055.00 and \$191.00 ([Filing No. 67](#)).

SO ORDERED.

Date: 8/10/2017



TANYA WALTON PRATT, JUDGE
United States District Court
Southern District of Indiana

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