COURT OF APPEALS DECISION DATED AND FILED

November 4, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 03-0097 Cir. Ct. No. 02CV005491

STATE OF WISCONSIN **IN COURT OF APPEALS DISTRICT I**

MARED INDUSTRIES, INC.,

PLAINTIFF-APPELLANT,

V.

ALAN MANSFIELD, INDIVIDUALLY, AND D/B/A DIAMOND BLADE WAREHOUSE,

DEFENDANTS-RESPONDENTS.

APPEAL from an order of the circuit court for Milwaukee County: MAXINE A. WHITE, Judge. *Affirmed in part; reversed in part*.

Before Wedemeyer, P.J., Fine and Curley, JJ.

¶1 PER CURIAM. Mared Industries, Inc., appeals from an order dismissing its case, without prejudice, against Alan Mansfield and Diamond Blade Warehouse, Inc. Mared argues that the trial court erred in: (1) reopening and vacating the default judgment entered against Mansfield; (2) vacating its order denying Diamond Blade Warehouse's motion to reopen the default judgment and,

accordingly, reopening and vacating the default judgment against Diamond Blade Warehouse; and (3) dismissing Mared's case as a result. Because service upon an authorized agent in lieu of personal service on the individual is permissible, and Mared's process server served a person claiming to be Mansfield's agent, and because the "d/b/a" designation is not indicative of a corporate entity, but only of another name, we accordingly reverse in part, and affirm in part.

I. BACKGROUND.

¶2 On June 5, 2002, Mared filed a complaint against Mansfield, individually, and doing business as Diamond Blade Warehouse, claiming breach of contract and intentional interference with contractual relations, and requesting injunctive relief and an accounting, as a result of an alleged violation of a contract and an earlier settlement agreement between the parties. For this appeal, however, we are concerned only with the propriety of the service of process.

¶3 Mansfield is the President of Diamond Blade Warehouse, Inc., an Illinois corporation. Diamond Blade Warehouse operates a warehouse facility in Buffalo Grove, Illinois. On June 10, 2002, William K. Monsen, an Illinois process server, delivered two authenticated copies of the Summons and Complaint to Michael Levy, an employee of Diamond Blade Warehouse, at the Buffalo Grove facility.[1] The process server maintains that Levy told him that he was authorized to accept service on behalf of both Mansfield and Diamond Blade Warehouse.

[1] Mared indicates that two copies were served, while Mansfield and Diamond Blade Warehouse contest this allegation. In a footnote, Mansfield and Diamond Blade Warehouse point to the affidavit of Michael Levy, who indicated only one copy was delivered.

Neither Mansfield nor Diamond Blade Warehouse, Inc.'s registered agent was served personally.

¶4 On June 18, 2002, Mansfield's (and Mansfield d/b/a Diamond Blade Warehouse's)[2] counsel contacted Mared's counsel by telephone. They allegedly discussed the claim and potential counterclaims, but no request for additional time to file an answer to Mared's complaint was made. There were several instances of contact between the two attorneys regarding the matter after that initial phone call. As of the July 25, 2002 deadline for filing, neither Mansfield nor Diamond Blade Warehouse had filed an answer.

¶5 On July 29, 2002, Mared filed a motion for default judgment. Upon receipt of the motion, Mansfield's counsel allegedly contacted Mared's counsel and requested additional time to file an answer, indicating that they had miscalculated the due date. The request apparently was denied, as a default judgment was granted on August 5.

¶6 On August 22, 2002, Mansfield filed a motion to reopen the default judgment alleging that neither Mansfield nor Diamond Blade Warehouse was properly served. On September 19, the trial court issued an order granting Mansfield's motion as to himself, but denying the motion as to Diamond Blade Warehouse. The trial court found that the service on Diamond Blade Warehouse "was sufficient to confer jurisdiction." (Emphasis omitted.) It held that "[o]mission of indication of corporate status from service papers, where the process was served on the entity, via Levy does not defeat jurisdiction, since

[2] Mansfield and Diamond Blade Warehouse are represented by the same counsel. For simplicity, we will refer to counsel only as "Mansfield's counsel."

amendment can be made to the pleadings at anytime [sic] such that they indicate DBW's corporate status."

¶7 On September 26, 2002, Mared filed a motion to amend the misnomer and appropriately identify the corporate defendant as "Diamond Blade Warehouse, Inc." On October 19, Mansfield (and Diamond Blade Warehouse) filed a motion to reconsider the September 19, 2002 order as to the denial of Diamond Blade Warehouse's motion to reopen the default judgment. He argued that since the complaint listed only "Alan Mansfield, individually and d/b/a Diamond Blade Warehouse," there was no notice, prior to the order of September 19, "that D[iamond] B[lade] W[arehouse], Inc., an independent legal entity, was at risk as a Defendant in this case." Mansfield asserted that in the trial court's order of September 19, the court "effectively substituted the Defendant in the case and entered an Order of Default against D[iamond] B[lade] W[arehouse], Inc." Accordingly, Mansfield also argued that amending the complaint to read "Diamond Blade Warehouse, Inc." would add a defendant to the case without proper notice.

¶8 On November 18, 2002, the trial court issued an order partially vacating its order of September 19, and granting Diamond Blade Warehouse's motion to reopen and vacate the default judgment. On December 17, the trial court issued a final order dismissing Mared's action, as it had previously determined that neither party was properly served.

II. ANALYSIS.

¶9 "The determination of whether to vacate a default judgment is within the sound discretion of the trial court. On appeal, the trial court's decision will not be disturbed unless there has been [an erroneous exercise] of discretion."

Gaertner v. 880 Corp., 131 Wis. 2d 492, 500, 389 N.W.2d 59 (Ct. App. 1986) (citation omitted). A trial court properly exercised its discretion if it "examined the relevant facts, applied a proper standard of law, and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." ***Loy v. Bunderson***, 107 Wis. 2d 400, 415, 320 N.W.2d 175 (1982). Yet, "[t]he interpretation and application of statutes present questions of law that we review *de novo*." ***State ex rel. Steldt v. McCaughtry***, 2000 WI App 176, ¶11, 238 Wis. 2d 393, 617 N.W.2d 201 (emphasis added). Thus, whether service of a summons and complaint is sufficient to confer jurisdiction over a defendant is "reviewed as a question of law." ***Useni v. Boudron***, 2003 WI App 98, ¶8, __ Wis. 2d __ , 662 N.W.2d 672.

A. The trial court erred in vacating its default judgment against Mansfield, as he was properly served.

¶10 Mared contends that WIS. STAT. § 801.11(1)(d) (2001-02)[3] permits service upon an individual's authorized representative. Mared further argues that "[t]he affidavit of Mr. Monsen and the testimony he provided on September 9, 2002, demonstrate[] that Michael Levy 'insisted' … that he had Mr. Mansfield's authority to accept service of process on his behalf." Mared contends that the trial court erred in addressing only WIS. STAT. § 801.11(1)(a) and (b), and failing to address § 801.11(1)(d), which permits service of process upon an authorized representative. We agree.

¶11 Wisconsin's "civil procedure rules require that the service of a summons *in a manner prescribed by statute* is a condition precedent to a valid

[3] All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

exercise of personal jurisdiction. If the court lacks personal jurisdiction, then any judgments rendered by it against the complaining party are void." ***State v. Moline***, 170 Wis. 2d 531, 539, 489 N.W.2d 667 (Ct. App. 1992) (citation and alteration omitted). Proper service is required, "notwithstanding actual knowledge by the defendant." ***Danielson v. Brody Seating Co.***, 71 Wis. 2d 424, 429, 238 N.W.2d 531 (1976). WISCONSIN STAT. § 801.11 sets forth the means by which proper service is achieved. It provides, in relevant part:

> **Personal jurisdiction, manner of serving summons for.** A court of this state having jurisdiction of the subject matter and grounds for personal jurisdiction as provided in s. 801.05 may exercise personal jurisdiction over a defendant by service of a summons as follows:
>
> **(1)** NATURAL PERSON. Except as provided in sub. (2) upon a natural person:
>
> (a) By personally serving the summons upon the defendant either within or without this state.
>
> (b) If with reasonable diligence the defendant cannot be served under par. (a), then by leaving a copy of the summons at the defendant's usual place of abode:
>
> 1. In the presence of some competent member of the family at least 14 years of age, who shall be informed of the contents thereof;
>
> 1m. In the presence of a competent adult, currently residing in the abode of the defendant, who shall be informed of the contents of the summons; or
>
> 2. Pursuant to the law for the substituted service of summons or like process upon defendants in actions brought in courts of general jurisdiction of the state in which service is made.
>
> ….
>
> (d) In any case, by serving the summons in a manner specified by any other statute upon the defendant *or upon an agent authorized by appointment or by law to accept service of the summons for the defendant*.

WIS. STAT. § 801.11(1) (emphasis added).

¶12 Mansfield contends that because no other statute allows for service of a natural person on an agent, the trial court should be affirmed:

> [Mared]'s novel argument, unsupported by any case law or other authority, that sections 801.11(1)(d) and 801.13(1), Wis. Stats. create an additional acceptable method of personal service upon a natural person must be rejected. Section 801.11(d) relates to serving a summons in a manner "specified by any ***other*** statute [e.g., a manner not already specified in section 801.11] upon the defendant or upon the defendant's authorized agent by appointment or by law," and cannot be read to eviscerate or conflict with the prior provisions of Wis. Stat. § 801.11. (emphasis added). Plaintiff's transparent attempt to rewrite the statute by reading out the service "specified by any other statute" requirement in favor of an independent basis for service on an authorized agent of a non-disabled adult natural person is wholly without support and cannot be accepted.

(Emphases and alterations in brief.) We disagree. If the statute is clear on its face, we apply it as such. *See* ***State v. Setagord***, 211 Wis. 2d 397, 406, 565 N.W.2d 506 (1997). A plain reading of the statute indicates that subsection (d) presents two additional alternatives for the service of a summons: (1) "in a manner specified by any other statute upon the defendant"; ***or*** (2) "upon an agent authorized by appointment or by law to accept service of the summons for the defendant." *See* WIS. STAT. § 801.11(1)(d).

¶13 In ***Fontaine v. Milwaukee County Expressway Commission***, 31 Wis. 2d 275, 143 N.W.2d 3 (1966), the supreme court read the predecessor statute in a similar manner and held that "in the absence of proof to the contrary the acknowledgement made by Mrs. Fontaine's attorneys was sufficient to give the circuit court jurisdiction over her under the agency provision of sec. 262.06(1)(d),

Stats."[4] ***Id.*** at 280 (footnote added). In that case, the general issue to be resolved was whether an attorney could accept service on behalf of his or her client, although not as an attorney under WIS. STAT. § 269.37 (1965),[5] but instead as an authorized agent under WIS. STAT. § 262.06(1)(d) (1965). *See* ***Fontaine***, 31 Wis. 2d at 279-80. Essentially, the supreme court held that an authorized agent could properly accept service on behalf of an individual. *See* ***id.*** Although the facts of that case are quite different from the facts here,[6] the court nevertheless acknowledged and validated the agency provision of § 262.06(1)(d) (or, WIS. STAT. § 801.11(1)(d)), without reference to or mention of the "in a manner specified by any other statute" clause.

¶14 Further, in ***Howard v. Preston***, 30 Wis. 2d 663, 668, 142 N.W.2d 178 (1966), the supreme court noted in passing that WIS. STAT. § 262.06(1)(d) "provides for service of a summons upon an agent authorized by appointment or

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[4] WISCONSIN STAT. § 262.06(1)(d) (1965) was renumbered as WIS. STAT. § 801.11(1)(d). As such, they are textually identical.

[5] WISCONSIN STAT. § 269.37 provided:

> **Service on attorney; when service not required.** When a party to an action or proceeding shall have appeared by an attorney the service of papers shall be made upon the attorney. When a defendant shall not have appeared in person or by attorney service of notice or papers in the ordinary proceedings in an action need not be made upon him unless he be imprisoned for want of bail.

[6] ***Fontaine*** concerned the receipt of a condemnor's written notice of appeal by the condemnee's attorneys. The court held that the attorney's formal acknowledgement of the receipt, by indicating in writing on the document that it was received, was sufficient to confer jurisdiction over Fontaine under the agency provision of § 262.06(1)(d), since, among other things, there was no indication to the contrary that Fontaine's attorneys were not authorized to act as her agents. *See* ***Fontaine v. Milwaukee County Expressway Commission***, 31 Wis. 2d 275, 279-80, 143 N.W.2d 3 (1966).

by law to accept service of the summons for the defendant[.]" In ***Punke v. Brody***, 17 Wis. 2d 9, 14, 115 N.W.2d 601 (1962), the supreme court noted, citing § 262.06(1)(d): "Our present statute, although inapplicable to this case, expressly authorizes service upon an agent authorized by appointment to accept service of summons for the defendant." Neither statement was qualified by any language indicating that that provision was dependent upon some other statute allowing for service upon an authorized agent. Although the holdings of these cases are not on point, the comments of the supreme court provide valuable guidance.

¶15 Thus, according to ***Fontaine***, it appears that there must be a *prima facie* showing of agency, and a lack of proof to the contrary, for service to be proper under WIS. STAT. § 801.11(1)(d) (or WIS. STAT. § 262.06(1)(d)). Here, during the September 9, 2002 hearing on Mansfield's motion to reopen, the process server (Monsen) testified as to what occurred when he visited Diamond Blade Warehouse's Buffalo Grove facility. Specifically, he testified that he walked into the facility and told the receptionist that he had some court documents that he needed to serve on Mansfield. She asked him to wait a moment and made a phone call. Shortly thereafter, he was approached by a man who identified himself as "Mr. Levy." According to the process server's testimony, he told Levy that he had court documents that he needed to serve on Mansfield. Levy told the process server that he was authorized to accept service of those papers. The process server reiterated that he needed to serve Mansfield personally, and Levy told him that he was authorized to accept them on Mansfield's behalf. After that exchange, he left the copies of the summons and complaint with Levy, briefly explained the process, told him whom to contact if he had any questions, and filled out an affidavit of service. The process server also testified that had Levy told him

that he was not authorized to accept the documents on behalf of Mansfield or the company, he would not have left them with him.

¶16 On cross-examination, Mansfield's counsel did not challenge or question the process server's testimony regarding what Levy told him or led him to believe. Mansfield offered no testimony into evidence during this hearing. Neither Mansfield nor Levy testified. There was one affidavit attached to Mansfield's motion to reopen, stating in part: "Michael Levy is not authorized to act as my agent. … I have not authorized Michael Levy to accept service on my behalf." Those conclusory remarks are the only indications in the record that this court can find, other than a few brief arguments of counsel, indicating that Mansfield challenged Levy's assertion that he claimed to be the authorized agent of Mansfield. Indeed, Levy's affidavit, filed well after this motion was decided, does not deny the allegations of the process server; he only claims that he was given just one copy, not two, of the summons and complaint on June 10, 2002.

¶17 Although the trial court eventually found that Mansfield was not properly served, it did note its impression of the process server's testimony in finding that Diamond Blade Warehouse was properly served. The trial court stated:

> As indicated by the testimony of server Monsen, as well as his handwritten notes regarding Levy's response to Monsen's attempt at service, Levy clearly represented that he was fully authorized to accept service on behalf of Mansfield and DBW.
>
> At the motion hearing Monsen testified that he is an experienced process server, a police officer for eight years, and a private investigator that has also taken additional training. He indicated that he served two authenticated copies of the summons and complaint – one on Levy who represented himself as the corporation's agent and the other on Levy who represented that he was authorized to accept

> service for Mansfield. Monsen's Affidavit, under the 'Remarks' section, states, "Mr. Levy insisted that he has full authorization from Mr. Mansfield to accept these documents on behalf of Mr. Mansfield and Diamond Blade Warehouse."

(Trial court's emphasis and footnotes omitted.) The trial court, as the finder of fact, "is the ultimate arbiter of both the credibility of the witnesses, and the weight to be given to each witness' testimony. This is especially true because the trier of fact has the opportunity to observe the witnesses and their demeanor on the witness stand." ***Pindel v. Czerniejewski***, 185 Wis. 2d 892, 898-99, 519 N.W.2d 702 (Ct. App. 1994) (citations omitted). The trial court accepted the process server's testimony that he believed Levy to be an authorized agent of Mansfield. That was reasonable. There was no contradictory testimony presented. The only arguably contradictory evidence in the record is Mansfield's affidavit, which includes the two sentences noted above. Yet, those conclusory statements do not directly impact the trial court's conclusion that Levy "clearly represented" that he was authorized to accept the documents and that the process server believed him.

¶18 As such, it is necessary to determine whether Levy's representation and the process server's belief that he was authorized to accept service on behalf of Mansfield are enough to conclude that Mansfield was properly served. Mared contends that ***Horrigan v. State Farm Insurance Co.***, 106 Wis. 2d 675, 317 N.W.2d 474 (1982), "stands for the entirely reasonable proposition that when an individual holds himself out to a process server as one who is authorized to accept service, the process server has the right to rely upon that representation." Mansfield argues that Mared's reliance on ***Horrigan*** is misplaced in that the party to be served in that case was a corporation, not a natural person. Mansfield further contends that "[t]he accuracy or inaccuracy of the process server's 'perception' of Levy's authority to accept service for Mansfield is not the issue. [Mared] simply

cannot, as a matter of law, achieve service of process on a non-disabled adult natural person in this manner."

¶19 Yet, pursuant to WIS. STAT. § 801.11(1)(d), service *can* be achieved in this manner. Further, although we agree with Mansfield that ***Horrigan*** is not directly applicable, since we are concerned here with service upon a natural person and not a corporation, the circumstances surrounding the service and the perception of the process server still ought to be taken into consideration. If they are not, the supreme court's concern, expressed in ***Horrigan***, would ring true here as well. The supreme court observed that:

> [w]hen a person appears in response to a request for someone who may be served with legal process, it will normally be reasonable for the process server to serve that person[, and t]o hold otherwise would produce a situation whereby a process server becomes a participant in a game of "hide-and-seek" at the mercy of secretaries or anyone else who chooses to prevent him from accomplishing his task.

Horrigan, 106 Wis. 2d at 684 (citation omitted). In this case, Levy clearly represented himself to be authorized to accept service on behalf of Mansfield. It was reasonable for the process server to believe that Levy was authorized to do so. Mansfield later claimed, in two sentences of an affidavit attached to a brief filed after a default judgment had been entered against him, that Levy was not his authorized agent. Yet, no testimony or other evidence was introduced at the hearing to disprove the process server's reasonable belief that Levy was authorized to accept service on behalf of Mansfield. If a process server cannot rely upon repeated confirmations from an individual regarding his or her authority to accept service on behalf of another individual, and a reasonable belief that that person is actually authorized to do so, the option of serving an individual's authorized agent would be rendered impractical and almost futile. Moreover,

under the circumstances, a reasonable process server would have believed Levy's assertion. He went to the identified business address, spoke to a secretary and told her his purpose. Shortly thereafter, Levy appeared and claimed to be an agent for both parties. This circumstantial evidence, including but not limited to the statements alleged to have been made by the agent, support the trial court's implicit finding that Levy was Manfield's agent and the conclusion that the service was proper.[7]

¶20 Finally, it appears that Mansfield has provided no reasonable excuse for failing to timely file an answer to Mared's complaint. He also never objected to the propriety of the service of process before the default judgment was entered. As such, we conclude that the trial court erred in vacating its default judgment against Mansfield as he was properly served under WIS. STAT. § 801.11(1)(d).

B. The trial court did not err in vacating its default judgment against Diamond Blade Warehouse, Inc., as the corporate entity was not properly named or served.

¶21 Mared contends that the trial court inappropriately and inconsistently determined that correcting the pleadings to reflect Diamond Blade Warehouse's registered name would add a new party. Mared insists that the trial court originally followed longstanding Wisconsin law and ruled that the omission of "Inc." was insignificant, that Levy was an appropriate person to accept service, and that Diamond Blade Warehouse was well aware of the claims made against it in the complaint. Mared submits that the trial court inexplicably reversed its decision and, in doing so, ignored its September order without pointing to any

[7] This court has addressed the claims set forth in the original briefs of the parties. The only evidence available to this court was that of the original appellate record.

solid evidence of "confusion" as to who was being sued. Mansfield argues that Wisconsin law clearly holds that the "d/b/a" designation does not create or constitute a distinct entity, and, as a result, Mared merely named Mansfield as a party twice, and failed to join Diamond Blade Warehouse, Inc., as a party. As such, Mansfield claims that "[Mared] fails to identify one reason why DBW, Inc., a separate and distinct legal entity from Alan Mansfield, upon receipt of the complaint, should have believed it was a defendant in the suit." While the trial court failed to address the reasoning behind its previous September order or to point to any solid evidence of "confusion" to support its explanation of its decision to vacate the default judgment, its essential rationale and conclusion—that amending the pleadings to include "Inc." would result in the addition of a party without proper service and notice—is grounded in the prevailing law.

¶22 Contrary to Mared's contentions, the "factual situation" of this case is not "virtually identical" to that in ***Hoesley v. La Crosse VFW Chapter, Thomas Rooney Post***, 46 Wis. 2d 501, 175 N.W.2d 214 (1970). In ***Hoesley***, the complaint named the defendant as "La Crosse VFW Chapter, Thomas Rooney Post," and referred to it as an "association" in the second paragraph of the complaint. The defendant was actually a corporation entitled "Thomas Rooney Post No. 1530, Veteran of Foreign Wars of the United States." The defendant claimed that the trial court had no personal jurisdiction over the appellant. The supreme court noted the general rule that

> [a]n amendment of a summons may be allowed to correct a mistake in the name of a party plaintiff or defendant as set out therein[, and] that if the misnomer or misdescription does not leave in doubt the identity of the party intended to be sued, or, even where there is room for doubt as to identity, if service of process is made on the party intended to be sued, the misnomer or misdescription may be corrected by amendment at any stage of the suit, or even

> after judgment, and a judgment taken by default is enforceable.

Hoesley, 46 Wis. 2d at 502 (citation omitted). The court went on to note, however, that "'if the effect of the amendment is to correct the name under which the right party is sued, it will be allowed[, but] if it is to bring in a new party, it will be refused.'" ***Id.*** at 503 (quoting ***Ausen v. Moriarty***, 268 Wis. 167, 174, 67 N.W.2d 358 (1954)). The court held that the misdescription was not misleading and that the purpose of the summons—to give the defendant notice of the action that had been commenced—had been achieved. It further concluded that the effect of amending the complaint would be to merely correct the name of the defendant, and not to bring in another party. *See* ***id.*** at 503-04.

¶23 In the instant case, Mared was attempting to name two parties, but failed to do so. By naming Mansfield individually and "d/b/a" Diamond Blade Warehouse, Mared was really only naming Mansfield in two different ways. "[T]he designation, '"d/b/a" means "doing business as" and is merely descriptive of the person or corporation who does business under some other name; *it does not create or constitute an entity distinct from the person operating the business*.'" ***Binon v. Great N. Ins. Co.***, 218 Wis. 2d 26, 35, 580 N.W.2d 370 (Ct. App. 1998) (quoting ***Jacob v. West Bend Mut. Ins. Co.***, 203 Wis. 2d 524, 537 n.7, 553 N.W.2d 800 (Ct. App. 1996) (emphasis added)); *see also* ***Edgley v. Lappe***, 342 F.3d 884, 889 (8th Cir. 2003); ***Duval v. Midwest Auto City, Inc.***, 425 F. Supp. 1381, 1387 (D. Neb. 1977); ***State v. Ivanhoe***, 798 P.2d 410, 412 (Ariz. Ct. App. 1990); ***Pinkerton's, Inc. v. Superior Court***, 57 Cal. Rptr. 2d 356, 360 (Cal. Ct. App. 1997). As such, the factual situation of this case is not "virtually identical" to that in ***Hoesley***. Here, there is one party named in two different ways, and one "party" not named at all. We cannot conclude, as Mared would like us to, that the

mistake is an insignificant technicality. The designation "d/b/a" is simply not indicative of a corporate entity; it only renames the party it immediately follows. Thus, to amend the pleadings would effectively add a defendant.

¶24 WISCONSIN STAT. § 801.02 provides, in relevant part:

> **Commencement of action. (1)** A civil action in which a personal judgment is sought is commenced as to any defendant when a summons and a complaint *naming the person as defendant* are filed with the court, provided service of an authenticated copy of the summons and of the complaint is made upon the defendant under this chapter within 90 days after filing.

(Emphasis added.) In ***Useni***, this court noted that "[t]he purpose of the summons is twofold: it gives notice to the defendant that an action has been commenced against such defendant and it confers jurisdiction on the court over the person served." 2003 WI App 98, ¶8. Here, Diamond Blade Warehouse, Inc., was never properly named and joined as a defendant in the pleadings. As such, it could not be properly served, and "[p]roper service of a summons and complaint is required to confer personal jurisdiction on the court over the person served." ***Id.***, ¶12. Further, notwithstanding Diamond Blade Warehouse, Inc.'s apparent awareness of the suit and the claims against it, actual knowledge is not a substitute for proper service. *See* **Danielson**, 71 Wis. 2d at 429.

¶25 Based upon the foregoing, we affirm in part and reverse in part.

By the Court.—Order affirmed in part; reversed in part.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.