

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

PHILADELPHIA INDEMNITY INSURANCE)
COMPANY,)
)
 Plaintiff,)
)
 v) Case No.: 19-1026-EFM
)
 PAL'S GLASS SERVICE, INC., *et al.*,)
)
 Defendants.)
 _____)

MEMORANDUM AND ORDER

This matter comes before the Court on the motion of Plaintiff Philadelphia Indemnity Insurance Company for Clerk's Entry of Default against Integrated Group Holdings, Inc.; Blu Rock Concrete, LLC; Pal's Glass Service, Inc.; and Sinclair Masonry, Inc. (collectively Defaulting Defendants) (Doc. 65). The case has a somewhat complicated procedural history, as explained in relevant part as follows.

A complaint against several parties, including all four Defaulting Defendants, was filed on February 5, 2019 (Doc. 1). The Complaint recited that the Resident Agent¹ for Integrated Group Holdings was BD Registered Agent, Inc., at 301 N. Main, Suite 600, Wichita, Kansas (Complaint ¶ 4); that the Resident Agent for Blu Rock Concrete was Tim Sinclair (Complaint ¶3); that the Resident Agent for Pal's Glass Service was BD Registered Agent, Inc. (Complaint ¶2); and that the Resident Agent for Sinclair Masonry was Milo Unruh (Complaint ¶ 5). The Complaint also recited that Integrated Group Holdings, Blu Rock Concrete and Pal's Glass Service were owned

¹ The pleadings in this case appear to use the terms "Resident Agent" and Registered Agent" interchangeable. The Court has used the phrase used in each particular pleading in this Order.

by Tim Sinclair (Complaint ¶ 18). No ownership for Sinclair Masonry was set forth in the Complaint, although it was noted that Tim Sinclair was the President of Sinclair Masonry (¶ 19).

Return of summons on Integrated Group Holdings showing service on BD Registered Agent was filed at Doc. 5. Return of summons on Blu Rock Concrete showing service on Tim Sinclair was filed at Doc. 13. Return of Summons on Pal's Glass Service showing service on BD Registered Agent was filed at Doc. 7. Return of summons on Sinclair Masonry, Inc. showing service on Milo Unruh was filed at Doc. 8. In each case, the return of summons showed service on the Registered Agent (or Resident Agent) identified for each Defaulting Defendant in the Complaint.

On May 21, 2019, an Application for Clerk's Entry of Default against the four Defaulting Defendants was filed by Plaintiff, at Doc. 23; and Clerk's Entry of Default as to those Defaulting Defendants was granted the next day, at Doc. 24.

On October 1, 2020, an Amended Complaint was filed (Doc. 37). This Amended Complaint named several defendants, including the four Defaulting Defendants. Notwithstanding that the Court had over a year prior granted Plaintiff's application for Clerk's Entry of Default as to those four defendants, the Amended Complaint did not set forth where these Defaulting Defendants could be served, but merely recited that they had each previously been served with process in this case (Amended Complaint ¶¶ 2-5). The Amended Complaint did recite once again that Integrated Group Holdings, Blu Rock Concrete and Pal's Glass Service were owned by Tim Sinclair (Amended Complaint ¶ 22), as had been asserted in the initial Complaint. Once again, no owner for Sinclair Masonry was set forth in the Amended Complaint.

On December 8, 2020, an Application for Clerk's Entry of Default against the four Defaulting Defendants was filed by Plaintiff, at Doc. 49. The Court denied that Application, at

Doc. 50, noting that an Order granting a Clerk's Entry of Default had been previously entered for these four Defaulting Defendants. The Order noted that, either those four Defaulting Defendants may no longer be fairly considered parties to this case, having been previously defaulted, and thus this Application was moot; or, if the filing of the Amended Complaint reinstated them as parties, no effective service of summons on those parties of the Amended Complaint had been made.

Thereafter, return of summons on Integrated Group Holdings showing service on BD Registered Agent was filed at Doc. 54; return of summons on Blu Rock Concrete showing service on Tim Sinclair was filed at Doc. 53; return of Summons on Pal's Glass Service showing service on Tim Sinclair was filed at Doc. 55; and return of summons on Sinclair Masonry, Inc. showing service on Tim Sinclair was filed at Doc. 56. The Returns for Integrated Group Holdings and Blu Rock Concrete showed service on their Registered Agents. The Return on Pal's Glass Service did not show service on the Registered Agent, but it did show service on the owner. The Court finds those services to have been sufficient.

As to Sinclair Masonry, however, service was not made on the Registered Agent. Furthermore, no pleading in this case has indicated who the owner of Sinclair Masonry is. However, the Return on Sinclair Masonry showed service on the President, and though perhaps not entirely proper the Court finds that such service is adequate.

The Court finds it curious that the Application for Clerk's Entry of Default recites that each of the four Defaulting Defendants were served by mail. As set forth in this Court's Order of December 9, 2020, denying the earlier Application for Default, service by mail is likely not effective. However, the Court's own review of each of the returns of summons reveals that none state that they were served by mail, and in fact each indicates a date and time of service, suggesting

personal service. Therefore, the Court disregards the “service by mail” representations made in the Application.

The Application is accompanied by an Affidavit by Jason Leiker, attorney for Plaintiff, noting service on the four Defaulting Defendants, their failure to plead or respond to such service of summons, the lapse of time provided for their responses, and the failure of an extension of time being requested or granted for such response.

THEREFORE, the Court orders that the Application for Clerk’s Entry of Default against Integrated Group Holdings, Inc.; Blu Rock Concrete, LLC; Pal’s Glass Service, Inc.; and Sinclair Masonry, Inc. should be GRANTED.

IT IS SO ORDERED.

Date this 13th day of April, 2021.



ERIC F. MELGREN
UNITED STATES DISTRICT JUDGE