

STATE OF MICHIGAN  
MACOMB COUNTY CIRCUIT COURT

ADAMS COMPLETE CLEANING  
& RESTORATION, CO,

Plaintiff,

vs.

Case No. 2015-4544-CB

MATRIX MHC, LLC,

Defendant.

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OPINION AND ORDER

Defendant has filed a motion to set aside the default entered against it with respect to Plaintiff's claims. Plaintiff has filed a response requesting that the motion be denied.

I. Factual and Procedural History

Plaintiff is a cleaning and restoration company based in Fraser, Michigan. Since 2013 Plaintiff has performed various services at a variety of manufactured home communities. The communities in question are known as Westbrook, Westbridge, Oakland Glens, Chesterfield, Fairchild Lake, and Cranberry Lake (collectively, "Communities"). Defendant is a management company that operates the Communities.

In its complaint, Plaintiff alleges that it contracted with Defendant to perform services at the Communities. Further, Plaintiff alleges that Defendant has failed to pay the amount owed under the alleged contract. In its complaint, Plaintiff purports to state claims for breach of contract (Count I), account stated (Count II), and unjust enrichment (Count III).

On January 22, 2016, a default was entered in this matter against Defendant based

on its failure to timely file an answer. On February 12, 2016, Defendant filed its instant motion to set aside the default. On February 25, 2016, Plaintiff filed its response. On February 29, 2016, the Court held a hearing in connection with the motion and took the matter under advisement.

## II. Standards of Review

MCR 2.603(A)(1) provides that “[i]f a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules, and that fact is made to appear by affidavit or otherwise, the clerk must enter the default of that party.” Pursuant to MCR 603(D)(1), “A motion to set aside a default or a default judgment, except when grounded on lack of jurisdiction over the defendant, shall be granted only if good cause is shown and an affidavit of facts showing a meritorious defense is filed.”

## III. Arguments and Analysis

With respect to good cause, Defendant contends that Plaintiff’s service of the complaint was defective. Specifically, Defendant avers that Plaintiff’s process server personally served its registered agent, but that since its registered agent is a corporation itself service must be made by serving the registered agent or officer of that corporation, or by serving a person in charge of the registered agent’s office and by sending another copy by registered mail.

The court rules do not address the proper manner of service on a limited liability company such as Defendant. *Bullington v Corbell*, 293 Mich App 549, 558; 809 NW2d 657 (2011). However, MCR 2.105(H)(1) generally permits service of process on “an agent authorized by written appointment or by law to receive service of process.” *Id.* “The resident agent appointed by a limited liability company is an agent of the company upon

whom any process, notice, or demand required or permitted by law to be served upon the company may be served." *Id.*, citing MCL 450.4207(2). In its motion, Defendant contends that MCR 2.105(D)(2) requires service to be made to the person in charge of the registered agent's office and by sending a copy via registered mail. In addition to the fact that MCR 2.105(D)(2) applies to private corporations, not limited liability companies, subsection (2) is but one of four ways MCR 2.105(D) specifically authorizes service to be made. Subsection (1) permits service to be made by serving an officer or registered agent. See MCR 2.105(D)(1). In this case, Plaintiff served Defendant's registered agent personally. Accordingly, not only did the service in this case satisfy the manner of service authorized by *Bullington*, the service was also consistent with MCR 2.105(D)(1). Consequently, the Court is convinced that Defendant has failed to establish that service was defective. As defective service was Defendant's only asserted basis for good cause to set aside the default in this case, and that position is without merit, the Court is convinced that Defendant has failed to establish that good cause exists for setting aside the default. Because good cause is a prerequisite to setting aside a default, Defendant's failure to establish good cause requires the Court to deny its motion.

#### IV. Conclusion

Based upon the reasons set forth above, Defendant's motions to set aside the default entered against it is DENIED. This *Opinion and Order* neither resolves the last claim nor closes the case. See MCR 2.602(A)(3).

IT IS SO ORDERED.

Date: APR 22 2016

Kathryn A. Viviano  
Hon. Kathryn A. Viviano, Circuit Court Judge