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THE APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
MERCER COUNTY
LAW DIVISION, SPECIAL CIVIL PART
DOCKET NO. DC-002519-20

RAVENSCROFT HOMEOWNERS
ASSOCIATION, INC.,

Plaintiff,

v.

GALINA DERROISNE, and DEREK
TURCIOS,

Defendant.

APPROVED FOR PUBLICATION

July 11, 2022

COMMITTEE ON OPINIONS

Decided: January 8, 2021

Melissa A. Volet, for plaintiff (Stark & Stark, PC, attorneys).

Galina Derroisne and Derek Turcios, defendants pro se, did not appear.

ANKLOWITZ, J.S.C.

The legal issue is whether electronic tracking information from the United States Post Service (USPS) can demonstrate satisfactory service of process by mail in a Special Civil Part case. The court clerk reviewed the certified mail pieces returned by the Post Office and advised plaintiff that service was ineffective. Plaintiff filed a motion and argued that since the USPS tracking codes show the certified mail was unclaimed, the clerk should

be overruled, the administrative dismissal pursuant to Rule 1:13-7(d) should be vacated, and default should be entered.

The certified mail pieces were returned to the court clerk and labelled, “Return to Sender, Insufficient Address, Unable to Forward.” The USPS tracking code (also known as “event code”) for July 3, 2020, states, “Notice Left (No Authorized Recipient Available).” The event code for August 14, 2020, states “Unclaimed/Being Returned to Sender.” In between the July 3 and August 14 entries, there is an undated entry on the USPS tracking history which states, “Reminder to Schedule Redelivery of your item.”

The markings for both defendants’ mail pieces were the same. Neither defendants’ regular mail has been returned.

Initial service by mail in the Special Civil Part is required by Rule 6:2-3(d)(1). Service is considered effective if the regular mail is not returned and the certified mail has either been claimed or is returned with a marking to indicate that service at the given address was good service. The Rule gives examples of markings that show ineffective service, such as certified mail returned with a stamp that says the addressee is not known. R. 6:2-3(d)(4). The constitutionality of service by mail has been litigated and the process, as set out in Rule 6:2-3(d), was upheld in the Appellate Division. N.J. Dist. Ct.

Assoc. v. N.J. Sup. Ct., 205 N.J. Super. 582 (Law Div.), aff'd o.b. 208 N.J. Super. 527 (App. Div. 1986).

When an issue of process arises regarding whether a court has jurisdiction to proceed, the court has taken the issue on its own analysis. See Franco v. Rivera, 379 N.J. Super. 273 (2005) (rejecting a landlord tenant settlement agreement because the notice to quit was deficient). In the present case, defendants have filed neither an answer to the complaint nor opposition to the motion. The proof of service on the motion indicates mailing by regular and certified mail return receipt requested to the same address that caused the problem in the first place. The lack of opposition does not mean defendants are unopposed to the relief requested; it may mean that defendants were not served with either the complaint or the motion. The present motion may still be addressed on its merits because an ex parte motion can be made to allow process to be served in the Special Civil Part. R. 1:13-7(d).

The markings on the mail pieces returned to the court are governed by the United States Domestic Mail Manual (DMM). Citing to the DMM is proper legal authority. “Because the DMM is incorporated by reference into the Code of Federal Regulations, it is deemed published in the Federal Register, 39 C.F.R. § 111.1, and a plaintiff is presumed to have notice of the DMM's contents.” Gelbfish v. U.S. Postal Serv., 51 F. Supp. 2d 252, 254

(E.D.N.Y. 1999). The DMM has been cited as authority in New Jersey. See e.g., Ward v. Merced, 277 N.J. Super. 590, 592-93 (App. Div. 1994); In re Avila, 206 N.J. Super. 61, 64 (App. Div. 1985) (Domestic Mail Manual).

Undeliverable mail is addressed in DMM § 507.1.1 (2020). A list of definitions for markings for undeliverable mail can be found in DMM Exhibit 507.1.4.1 (2020). Insufficient Address means “[m]ail without number, street, box number, route number, or geographical section of city or city and state omitted and correct address not known.” DMM § 507.1.4.1 (2020). Not Deliverable as Addressed—Unable to Forward means “[m]ail undeliverable at address given; no change-of-address order on file; forwarding order expired.” DMM § 507.1.4.1 (2020). Pursuant to DMM § 507.2.0 (2020) mail forwarding lasts 18 months and can be extended for another year. DMM §§ 507.2.1.1 and 507.2.1.2 (2020).

USPS tracking is a service provided by the post office. DMM § 503.7 (2020). However, unlike markings on mail pieces, there is no list of USPS tracking codes defined in the DMM. An event code is “[a] digit or letter indicating the purpose of the scan (e.g., an acceptance or delivery scan).” USPS Publication 32, Glossary of Postal Terms (2013). However, USPS Publication 97, Priority Mail Express Manifesting Business and Technical Guide, Appendix I (2018), has a list of event codes and their definitions.

Plaintiff argues that since the USPS tracking information shows that notice was left and that mail was returned unclaimed, service was proper. Since the mail was returned to the clerk, the labels on the mail pieces and the event codes on the USPS tracking website can be compared. See R. 1:6-6 (properly submitted evidence on a motion can be considered). The event codes for “attempted/notice left” are defined in USPS Publication 97 to mean, “[s]can of the package at the final delivery address but delivery not made due to no recipient available, unsafe to leave unattended, etc. Notice left includes leaving a PS Form 3849, Delivery Notice / Reminder / Receipt.”

The parentheses after “notice left” in the tracking information in this case shows that there was no one there to take the mail. That would be consistent with the mail being unclaimed. That would also be consistent with the intended recipients not being at the address indicated on the mail piece. In other words, just because the postal carrier on July 3 may have left a notice at the stated address does not exclude the post office from later determining that the addressee was no longer at that address and, subsequently returning the mail piece with an insufficient address label. Further, whether a notice was left or whether the postal carrier only meant that the address was insufficient is an open question.

The event codes are loosely defined in USPS publications, but the mail piece markings are clearly defined in the DMM. The DMM mail piece markings outweigh the conflicting evidential value of USPS tracking codes. For the foregoing reasons, the court finds that the markings on the mail piece control. Those markings indicate the mail was not delivered and, therefore, process has not been served. As such, the reason for dismissal has not been cured and the case is not reinstated. Rivera v. Atl. Coast Rehab. & Health Care Ctr., 321 N.J. Super. 340, 346 (App. Div. 1999) (“the right of reinstatement is implicit in the rule [1:13-7] itself, and hence reinstatement is ordinarily routinely and freely granted when plaintiff has cured the problem that led to the dismissal”). Since defendants have not been served default is not entered. R. 6:6-2.

Plaintiff is not without a remedy. Plaintiff can request reservice at the address if plaintiff can “provide a postal verification, affidavit containing a statement that sets forth the source of the address used for service of the summons and complaint, or other proof satisfactory to the court that the party to be served receives mail at that address.” R. 6:2-3(d)(2). Since the requirement that initial service by mail through the clerk’s office has been attempted, plaintiff may request alternate service. R. 6:2-3(b).