

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

CV 2014-092139

10/19/2015

COMMISSIONER MARGARET BENNY

CLERK OF THE COURT

T. Haaser

Deputy

GAINNEY VILLAGE OWNERS ASSOCIATION W WILLIAM NIKOLAUS

v.

MELL G UNDERWOOD, et al.

MINUTE ENTRY

The Court has received Plaintiff Gainey Village Homeowners Association's Request and Affidavit for Entry of Judgment by Default and Without Hearing. The motion was filed on May 4, 2015 and the default packet was provided to this court on July 7, 2015. The Court granted the request for default judgment as to Paula Underwood but rejected the request for default judgment as to Mell G. Underwood due to lack of service. Although the complaint and summons was sent by certified mail to Mell Underwood to an address in Atascadero, California, there was no proof submitted to the court that the mail was ever received. No signed "green card receipt" was provided. The Court returned the default packet noting the service concerns. The default packet has now been returned with the submittal of original mail discussed below.

Rule 4.2(c) of the Arizona Rules of Civil Procedure allows a defendant who resides out of state to be served by mail. However, the summons and complaint must be sent to the person being served by a form of mail which requires a *signed* and returned receipt. Once the *signed* receipt is returned through the post office, Rule 4.2(c) requires that the serving party file an affidavit with the court with an attached copy of the receipt as evidence that the papers *were in fact received by the party being served*. See Rule 4.2(c). In this case, Plaintiff has provided this judicial officer with the original mail that was sent certified return receipt requested to the

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Defendant, but later returned to Plaintiff. The original envelope has a sticker marked “unclaimed” with an *unsigned* green card receipt still attached to it.

Therefore, because the certified mail was never signed for and was eventually returned to Plaintiff, attempted service by certified mail **was not successful**. Plaintiff cannot proceed to seeking the entry of default judgment based upon this attempted mail service. In Plaintiff’s Rule 4.2(b) affidavit (really a Rule 4.2(c) affidavit), Plaintiff indicates that prior correspondence sent to Defendants Underwood was not returned undeliverable. Plaintiff should seek to attempt personal service upon Defendant Mell Underwood at this address if it believes the address to be a valid one. The Court also suggests that Plaintiff confirm with the United States Postal Service that the California address is still a valid mailing address for Defendant Mell Underwood. If personal service under Rule 4.2(b) or certified/return receipt service is not successful for Defendant, then Plaintiff will need to consider whether there is a need to publish or seek service by alternative means.

THE COURT FINDS that Defendant Mell Underwood has not been served.

THEREFORE,

IT IS ORDERED denying Plaintiff Gainey Village Homeowners Association’s Request and Affidavit for Entry of Judgment by Default and Without Hearing without prejudice. The request is premature.

IT IS FURTHER ORDERED that the original mail documents attempted to be served upon Mell Underwood and received by the Court along with the default packet shall be filed with the Clerk of Court this day.

FURTHER, this judicial officer also brings to Plaintiff’s attention the minute entry order regarding extension of service signed by Judge Mark Aceto on July 29, 2014. The Court extended the deadline for service to November 14, 2014 and indicated that if service was not accomplished with proof of service being filed before that date, all claims against unserved Defendants would be dismissed without further notice. Plaintiff should consider whether it should move to reinstate case as to Defendant Mell Underwood, to further extend time to serve and/or move to allow for an alternative means of service.

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IT IS FURTHER ORDERED signing this minute entry as a formal order of this Court.

/ s / COMMISSIONER MARGARET BENNY

JUDICIAL OFFICER OF THE SUPERIOR COURT