

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ACCU-TECH CORP. : CIVIL ACTION  
 :  
 v. :  
 :  
 NETWORK TECHNOLOGIES GROUP, :  
 INC., et al. : NO. 05-1923

MEMORANDUM

Bartle, J.

June 17, 2005

Plaintiff has brought this action alleging defendant Network Technologies Group, Inc. ("NTG") breached a contractual obligation to pay plaintiff for goods plaintiff delivered to NTG. Defendant John G. Olson ("Olson") who has served as secretary, treasurer, vice-president, or president of NTG allegedly breached his contractual obligation to guarantee NTG's payments to plaintiff. When it did not receive a response to its demand letter to Olson of April 5, 2005, plaintiff filed this complaint on April 26, 2005.

Before the court is the motion of plaintiff Accu-Tech Corp. for service by publication pursuant to Rule 4(e)(1) of the Federal Rules of Civil Procedure and Rule 430 of the Pennsylvania Rules of Civil Procedure. Under Rule 4(e)(1) of the Federal Rules of Civil Procedure, service may be effected pursuant to the law of the state in which the district court sits. Rule 430 of the Pennsylvania Rules of Civil Procedure provides that if service cannot be made to defendant's residence or place of

business as provided by the rules, plaintiff may move the court for a special order directing the method of service. However, before requesting leave to make alternative service, plaintiff must make a "good faith" efforts to locate and serve the defendant. Grove v. Guilfoyle, 222 F.R.D. 255, 256 (E.D. Pa. 2004); Adoption of Walker, 360 A.2d 603 (Pa. 1976). Such good faith efforts might include, among other things, inquiries of postal authorities, inquiries of relatives, friends, neighbors, and employees of defendant, and examinations of voter registration records, local tax records, and motor vehicle records. Pa. R. Civ. P. 430(a), note. Alternative service is only appropriate when service '**cannot** be made' under the applicable Rule, and only as a last resort." Grove, 222 F.R.D. at 257 (emphasis in original) (citing Pa. R. Civ. P. 430(a)).

After filing the complaint, plaintiff made numerous unsuccessful efforts to serve both defendants. Plaintiff attempted to serve NTG at the location from which NTG had done business with plaintiff. This same location is listed by Dun & Bradstreet, Inc. as NTG's place of business where it had eight employees. On April 27, 2005, however, plaintiff found that NTG had abandoned the address. The telephone number plaintiff's counsel obtained from directory assistance had been "temporarily disconnected 'at the customer's request.'" No forwarding number was provided. An alternate address for NTG was found in Westlaw's "business tracker record search." It was the former

home of the former president of the company, but it was not a correct address for NTG.

Although unsuccessful, plaintiff has made good faith efforts as envisioned by Rule 430 to locate and serve defendant NTG. See id. at 256. Therefore, the motion of plaintiff to serve NTG by publication shall be granted.

As to defendant Olson, plaintiff attempted service six times at defendant's current home address listed in Westlaw's "people finder historic tracker record." On the seventh time, defendant Olson's father answered the door and refused to provide the defendant's current address. Plaintiff again tried the Westlaw "people finder historic tracker record" and ran a search on Accurint.com, but came up with the same incorrect address. Plaintiff has been unable to find defendant Olson through directory assistance or through searching on the Google internet search engine.

Despite the commendable efforts plaintiff has demonstrated so far, all avenues apparently have not been pursued. There is no indication that plaintiff has attempted to examine voter registration records, local tax records, or motor vehicle records, as suggested by the note to Rule 430(a). Service by publication, as noted above, is a last resort. We are not convinced that plaintiff has made the appropriate effort to locate Olson so as to forego personal service of process.

Accordingly, we will deny plaintiff's motion as to defendant Olson without prejudice. Defendants shall be afforded

an additional 60 days to take further steps to serve him and if unsuccessful may file a renewed motion for service by publication.

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ORDER

AND NOW, this 17th day of June, 2005, for the reasons set forth in the accompanying Memorandum, it is hereby ORDERED that:

(1) the motion of plaintiff Accu-Tech Corp. for service by publication as to defendant Network Technologies Group, Inc. is GRANTED; and

(2) the motion of plaintiff Accu-Tech Corp. for service by publication as to defendant John G. Olson is DENIED without prejudice. Plaintiff shall have 60 days from the date of this order to take further steps to serve Olson and if unsuccessful may file a renewed motion for service by publication.

BY THE COURT:

/s/ Harvey Bartle III

J.

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J.