

STATE OF VERMONT
WINDSOR COUNTY, SS.

NORMAN E. WATTS, PC, Plaintiff : WINDSOR COUNTY SUPERIOR COURT
v. : DOCKET NO. 383-8-03-Wrcv
TRACEY E. ELDREDGE, Defendant :

DECISION RE: PLAINTIFF'S REQUEST FOR WRIT OF EXECUTION

On November 6, 2003, the Court granted default against defendant Tracey E. Eldredge, for breach of contract. On December 3, 2003, the Court issued a Judgment Order in the amount of \$5,461.31 plus post-judgment interest. On January 7, 2004, plaintiff Norman E. Watts submitted a proposed Writ of Execution for the clerk's review and signature. On January 16, 2004, plaintiff submitted a "Return of Service," signed by Mary Croft, a paralegal and notary public employed by plaintiff's law firm. The "Return of Service" indicates that Ms. Croft made service of the Judgment Order by personally handing it to her in Woodstock, Vermont. Following a default judgment, V.R.C.P. 62(b) requires personal service on the defendant, as follows:

(b) Stay of Execution on Default Judgment. Execution in a personal action shall not issue upon a judgment by default until it has been served on the defendant by personal service or by mail by the methods provided in Rule 4(f) for a summons and complaint served outside the state. . . .

One of the purposes of Rule 62(b) is to give an absent defendant against whom a default judgment has been entered time to move for the setting aside of the default under Rule 60(b). Rule 62(b), reporter's notes at 344. The rule has been amended to adopt a workable system that will allow a clerk to issue a writ of execution without having to determine whether the defendant is "absent" or whether he or she has "actual notice." The current rule clearly requires service under Rule 4.

In this case, Ms. Croft apparently "served" Ms. Eldredge by personally handing her a copy of the Judgment order. However, it does not appear that Ms. Croft is a sheriff or deputy sheriff, a constable or other person authorized by law to serve process under V.R.C.P. 4(c). Given the lack of clear compliance with Rule 4, the clerk cannot issue the writ of execution.

Plaintiff's Request for a Writ of Execution is DISMISSED.

Dated at Woodstock, Vermont, this 28th day of January, 2004.

Mary Miles Teachout
Hon. Mary Miles Teachout,
Presiding Superior Court Judge

FILED

JAN 28 2004

WINDSOR COUNTY CLERK