STATE OF WISCONSIN | CIRCUIT COURT Branch 2 | JEFFERSON COUNTY

DAVID J. WOLF,

Plaintiff,

v.

Case No. 12-CV-906

ARLAND CLEAN FUELS, LLC,

Defendant.

PLAINTIFF'S BRIEF IN OPPOSITION TO MOTION TO VACATE DEFAULT JUDGMENT.

On February 19, 2013, upon motion of the Plaintiff David Wolf, the Court entered a default judgment against Defendant Arland Clean Fuels, LLC ("Arland").[1] On March 19, 2013, Arland filed a motion to vacate the default judgment, citing two bases. First, Arland argues that mistake, inadvertence, or excusable neglect exist such that would entitle it to a reopening of the judgment. Second, Arland asserts that it was not properly served, and therefore the Court lacks personal jurisdiction over it. Neither argument has merit. Moreover, Arland's brief in support of its motion as well as the supporting affidavits are rife with, at best, misstatement of fact, and at worst misrepresentations to the Court. Thus, even if Arland were able to articulate a non-frivolous argument, which is not the case, the veracity of the facts it has alleged in support of its motion must be viewed with skepticism. Consequently, the Court should deny Arland's motion to vacate the judgment to Plaintiff.

[1] Arland reports that it is now doing business as Generation Clean Fuels, LLC. For convenience and clarity it is herein denominated as "Arland" regardless of the name that Defendant chooses to call itself.

FACTS

The facts of the underlying case are set forth in the Complaint. For the sake of brevity they are hereby incorporated by reference as if fully set forth herein. Additional facts related to Arland's motion to vacate are set forth as follows.

Plaintiff engaged the services of ATG LegalServe of 1 South Wacker Drive, 24th Floor, Chicago, Cook County, Illinois 60606 to affect service of process upon Arland at its principle place of business located at 630 Davis Street, Suite 300, Evanston, Cook County, Illinois 60201. Affidavit of Travis James West in Support of Plaintiff's Brief in Opposition to Defendant's Motion to Vacate Judgment ("West Aff."), ¶ 2.

On December 20, 2012, Mr. Jacob Osojnak, a privately contracted Illinois process server since 1999, received an assignment from ATG LegalServe to serve the summons and complaint on Arland. Affidavit of Jacob Osojnak in Support of Plaintiff's Brief in Opposition to Defendant's Motion to Vacate Judgment ("Osojnak Aff."), ¶ 2. Mr. Osojnak entered the offices of Arland at approximately 10:50 a.m. on December 24, 2012, and was approached by an individual who identified himself as Michael Bertogli. *Id.* Mr. Osojnak asked Mr. Bertogli if he was authorized to accept service for Arland. *Id.* Mr. Bertogli stated that he was not sure but that he would ask a co-worker. *Id.* Mr. Bertogli left the vicinity and upon his return informed Mr. Osojnak that he would accept service of the summons and complaint, but would not sign for them.[2] *Id.* In reliance upon Mr. Bertogli's statement, Mr. Osojnak handed him the documents. *Id.* Plaintiff thereafter caused the Affidavit of Service by Mr. Osojnak to be filed with the Court on January 9, 2013.

On January 10, 2013, Arland's general counsel, Mr. Eric Decator, contacted Plaintiff to request an extension of Arland's answer deadline. Affidavit of Eric R. Decator in Support of Motion to Vacate Judgment, filed March 19, 2013 ("Decator Aff."), ¶ 3. Mr. Decator initially requested an indefinite extension. West Aff., ¶ 3. Plaintiff declined. *Id.* Mr. Decator then requested a 90 day extension. *Id.* Based upon Plaintiff's prior history of dealing with Arland, this request was declined as well. *Id.* Plaintiff ultimately agreed to provide a thirty-day extension until February 11, 2013, for Arland to file a responsive pleading. *Id.*

At no time did Plaintiff agree to withhold or forebear filing a motion for default if a settlement offer was provided by Arland prior to February 11, 2013. *Id.* at ¶ 4. Plaintiff was leery about Arland's intentions as a consequence of its past bad faith negotiations with Plaintiff (which is, after all, what the underlying merits of this case are all about). Accordingly, thereafter both Arland and Plaintiff confirmed in writing that the agreed-upon extension related only to Arland's deadline for filing a responsive pleading. *Id.* at ¶ 4 and Exh. A.

Although Plaintiff received a settlement proposal from Mr. Decator at 3:29 pm on February 11, 2013, Arland neither filed nor served any responsive pleading. *Id.* at ¶ 5, Exh. B. Consequently, Plaintiff filed a motion for default judgment. Although not required by Wisconsin law, as a courtesy Plaintiff forwarded a copy of the motion to Mr. Decator. *Id.* at ¶ 6, Exh. C. Mr. Decator subsequently contacted Plaintiff and demanded withdrawal of the motion on the basis that Plaintiff had agreed to forebear filing for default if a settlement offer was extended prior to February 11, 2013. *Id.* at ¶ 7. Plaintiff pointed out that this was not true, and

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[2] Arland asserts in its brief that Mr. Bertogli signed for the summons and complaint when presented with the same by Mr. Osojnak. *See* Arland Br. at p. 1; *see also* Affidavit of Michael Bertogli, filed with the Court on March 19, 2013 ("Bertogli Aff."), ¶ 14. A review of the records maintained by ATG LegalServe and Mr. Osojnak reveal that this statement is not true, and that Mr. Bertogli did not sign for the summons and complaint.

subsequently re-forwarded the email exchange confirming the agreement for an extension that was reached on January 10, 2013. *Id.* at Exh. D.

Mr. Decator then asked for another extension, stating that he believed that Arland could obtain funding to pay the entire amount owed if it could have an additional 60 days to close an unrelated transaction that would permit it to obtain a loan. *Id.* Plaintiff declined, again asserting that the requested extension was unreasonable, particularly in light of the reasons cited in the letter of February 15, 2013. *Id.* Plaintiff informed Mr. Decator, both orally and in writing, that it was willing to continue to consider settlement offers, but that not withdrawal the motion in the absence of an appropriate settlement. *Id.* Accordingly, if Arland desired to resolve the matter prior to the entry of judgment it would need to propose an acceptable settlement prior to the Court acting upon Plaintiff's motion. *Id.* Further, Plaintiff cautioned that although – depending upon the county – Wisconsin courts will generally refrain from acting upon a motion for five-to-ten days after it is filed, Plaintiff had no control over when the Jefferson County Circuit Court would consider the motion for default. *Id.* Notwithstanding this caution, Plaintiff was clear that it would take no action to ask the Court to withhold action upon the motion. *Id.*

Despite its professed concerns, Arland never provided any further response or settlement offer after February 15, 2013. *Id.* at ¶ 8. On February 19, 2013, the Court considered the motion for default and granted it.

On or about March 6, 2013, Mr. Osojnak returned to Arland's facilities in his capacity as a private investigator. Osojnak Aff., ¶ 4. He had been hired by Chase Paymentech, LLC ("Chase"), a subsidiary of JPMorgan Chase Bank, N.A., to conduct an investigation related to Equity Asset Finance ("EAF"), an affiliate of Arland operating from Arland's office space. *Id.* When he returned to Arland's office, he noted that once again the only sign on the door was for

Arland. *Id.* He was directed to work exclusively with Mr. Bertogli, who answered questions about business operations, explained that EAF financed the operations of Arland, and allowed him to take interior photographs of the workspace. *Id.* Based upon his interactions and conversations with Mr. Bertogli, it was clear to Mr. Osojnak that Mr. Bertogli was knowledgeable about the business operations of and performed work for both companies. *Id.*

ARGUMENT

I. ARLAND CANNOT MEET THE STANDARD REQUIRED TO REOPEN A JUDGMENT

Arland first argues that the judgment should be vacated because it relied upon statements and "promises" by counsel for Plaintiff in electing not to file a timely motion responsive pleading. The problem with Arland's argument is that the undisputed – and, given that they are in writing, undisputable – facts demonstrate that neither Plaintiff nor his counsel made any such promises.[3] Even if this were not the case, Arland's motion must still be denied as it has failed to argue the second – and perhaps most important – prong of the test required to vacate a judgment under Wisconsin law: the defendant must demonstrate a likelihood of success on the merits. Here, Arland has not argued, because it cannot argue, that it has any likelihood of success on the merits. Finally, Arland attempts to salvage its argument by relying upon the catch-all provision of Section 806.07, which permits the Court to reopen a judgment under extraordinary circumstances. Here, Arland's Hail-Mary fails as an analysis under the five-factor test required to obtain such equitable relief (which it does not even bother to undertake) reveals that no extraordinary circumstances exist.

A. Applicable Legal Standard

In the context of a motion to vacate, the "burden of proof is on the person seeking to reopen and set aside or vacate the default judgment." *Richards v. First Union Sec., Inc.*, 2006 WI 55, ¶ 27, 290 Wis. 2d 620, 714 N.W.2d 913. Further, "the evidence necessary to set aside such a judgment is evidence sufficient to allow a court to determine that the circuit court's findings of fact were "'contrary to the great weight and clear preponderance of the credible evidence[ ].'" *Id.* quoting *Emery v. Emery*, 124 Wis. 2d 613, 622, 369 N.W.2d 728 (1985). In considering whether to grant relief from default, the circuit court must apply the standards set forth in Wis. Stat. § 806.07(1). *Hedtcke v. Sentry Ins. Co.*, 109 Wis. 2d 461, 468, 326 N.W.2d 727 (1982). Wis. Stat. § 806.07 provides, in relevant part:

> (1) On motion and upon such terms as are just, the court . . . may relieve a party or legal representative from a judgment, order or stipulation for the following reasons:
>
> (a) Mistake, inadvertence, surprise, or excusable neglect;
>
> . . .
>
> (h) Any other reasons justifying relief from the operation of the judgment.

Mistake, inadvertence, or excusable neglect in this context is conduct "which might have been the act of a reasonably prudent person under the same circumstances." *Hedtcke*, 109 Wis. 2d at 468. It is "not synonymous with neglect, carelessness or inattentiveness." *Id.*

In addition to the statutory bases for relieving a party from a judgment recognized in Wis. Stat. § 806.07, the court must also consider the extent to which the defendant has a meritorious

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[3] Arland and Mr. Decator inexplicably fail to present the Court with the written correspondence evidencing that no such promises had been made despite the fact that Mr. Decator was a party to such communications. For the convenience of the Court, Plaintiff has provided copies of the same. *See* West Aff. at Exh. A and D.

defense to the action. *J.L. Phillips & Assocs.*, 217 Wis. 2d at 358-59. Wisconsin courts have held that "if any defense relied upon states a defense good at law, then a meritorious defense has been advanced . . . . A defense 'good at law' is a defense that requires no more and no less than that which is needed in a timely-filed answer to survive a motion for judgment on the pleadings." *Id.* at 360.

A Court may also vacate a judgment under Section 806.07(1)(h) if extraordinary circumstances are present justifying relief in the interest of justice. *Miller v. Hanover Ins. Co.*, 2010 WI 75, ¶ 35, 326 Wis. 2d 640, 785 N.W.2d 493. When weighing such a decision, the burden remains upon the moving party to present supporting evidence, which must then be analyzed pursuant to a five factor test:

1. Was the judgment the result of a conscientious, deliberate, and well-informed choice of the moving party?
2. Did the moving party receive effective assistance of counsel?
3. Does the value of determining the case on the merits outweigh the value of finality?
4. Is there a meritorious defense to the claim?
5. Are there intervening circumstances that make it inequitable to grant relief?

Id. at ¶ 29.

B. Arland Has Failed to Meet it Burden to Establish Mistake, Inadvertence, or Excusable Neglect.

In support of its motion, Arland argues that its general counsel, Mr. Decator, failed to retain counsel and file a responsive pleading because he believed that an agreement had been reached that alleviated Arland of its responsibility to file a responsive pleading on or before February 11, 2013. *See* Arland Br. at p. 8. It then asserts that "[t]his simple miscommunication between counsel and the failure to put oral agreements into writing should not bar [Arland] from

an equitable legal outcome." *Id.* In his affidavit, Mr. Decator further avers that because the Court acted quickly to grant Plaintiff's motion, he lacked sufficient time to "arrange for Wisconsin counsel to draft and file a response to the Motion for Default Judgment." *Id.*

The arguments of Arland are legally insufficient and are based upon false premises. First, Arland's assertion that the parties failed "to put oral agreements into writing" is a falsehood. Mr. Decator and Plaintiff each independently confirmed to the other ***in writing*** that Arland's deadline by which to file a responsive pleading was extended from January 10 to February 11, 2013. *See* West Aff., at ¶ 4, Exh. A. The parties never had an agreement to extend the responsive pleading deadline indefinitely so long as Arland provided a settlement offer on or before February 11, 2013. If such an agreement had existed, it was Arland's burden to produce it or some evidence thereof, and it has failed to do so.

Second, Arland argument that it lacked sufficient time to obtain Wisconsin counsel is equally false. Arland was served on December 24, 2012, meaning that it had seven full weeks to obtain counsel before the February 11 responsive pleading deadline. Even if Arland did not begin making efforts to obtain Wisconsin counsel until Mr. Decator obtained the extension from Plaintiff on January 10, it still had a full 30 days to do so. When it finally decided to make an appearance in this matter on March 19 – almost three months after it was served – it became clear that Arland had access to Wisconsin counsel all along, as it is represented in this action by one of its own employees. In other words, Arland did not need time to "find" Wisconsin counsel because it already had Wisconsin counsel. Further belying Arland's argument is that it has been more than five months since it was served and it has not retained alternative or local counsel.

Third, setting aside its failure to establish mistake, inadvertence, or inexcusable neglect, Arland's motion fails in a more important respect. As set forth above, the second prong of the

test for motions to vacate a judgment require that the moving party must have at least alleged a meritorious defense to Plaintiff's claims. Here, although it bore the burden to do so, Arland has not alleged a meritorious defense. It's only argument that comes close is that Arland's new ownership was attempting to "decipher[] the contractual obligations" of the company. *See* Arland Br. at pp. 9-10. That Arland may have been confused about its own obligations is not a defense. Moreover, it has been more than five months since Arland was served and thus it has had ample time to sift and winnow through any such confusion. Despite having been provided such opportunity at Plaintiff's expense, Arland has yet to assert any meritorious defense to Plaintiff's claims.

C. Arland Has Failed to Establish that Extraordinary Circumstances Are Present Justifying Relief in the Interest of Justice.

Perhaps recognizing the frivolity of its primary argument, Arland relies upon the catch-all grounds for relief set forth under Wis. Stat. § 806.07(1)(h). To prevail under such a theory Arland bears the burden of providing the Court with evidence that, pursuant to the five factor analysis discussed above, establishes that extraordinary circumstances require relief from the judgment. Although Arland correctly enunciates the five factor test in its brief it fails to provide any analysis related to the test – likely because a review of such factors indicates that the relief requested by Arland is not warranted.

1. Was the judgment the result of a conscientious, deliberate, and well-informed choice of the moving party?

In this case, the undisputed evidence indicates that the default judgment was a result of Arland's deliberate choices. Arland was aware of the original deadline for filing a responsive pleading, as evidenced by its request for an extension on January 10. Arland was aware of Plaintiff's refusal to grant an indefinite extension or a 90 day deadline. Arland was aware that Plaintiff ultimately granted it a reasonably 30 day extension, and it even went so far as to

confirm such deadline in writing. In addition, Arland employs an attorney who is admitted to practice in Wisconsin, and despite having access to this resource (as well as to its attorney admitted to practice in Illinois) elected to send Plaintiff an eleventh-hour settlement offer rather file a timely responsive pleading.

2. Did the moving party receive effective assistance of counsel?

Arland employs at least two attorneys on its staff: Mr. Decator, who avers that he is a member in good standing with the Bar of the State of Illinois, and Mr. Camilli, who appears to be an attorney in good standing with the Bar of the State of Wisconsin. Arland has not argued that either of its counsel were ineffective or professionally negligent. Moreover, as discussed in the preceding paragraph (as well as West Aff., Exh. A) Arland was aware of its responsive pleading deadline.

3. Does the value of determining the case on the merits outweigh the value of finality?

As discussed above, despite having almost five months to do so, Arland has asserted no defenses to Plaintiff's claims and therefore failed to meet its burden. As a consequence, it has established is that the only value in reopening the case to permit adjudication on the merits would be that Arland will have further delayed Plaintiff's efforts to recover the funds he is owed. Such "value" is not real value at all, and it certainly is not in the interest of justice as it would serve only to waste the limited resources of Plaintiff and this Court. Consequently, the value of finality substantially outweighs the "value" of reopening this matter.

4. Is there a meritorious defense to the claim?

Plaintiff asserted claims for damages and declaratory relief related to Arland's breach of contract and, in the alternative, unjust enrichment. The entirety of such claims was based upon a five-page agreement attached as Exhibit A to the complaint. As repeated several times now,

despite 1) the straightforward nature of Plaintiff's claims, 2) that it was Arland's burden to assert at least one meritorious defense, and 3) that almost half-a-year has now passed, Arland has yet to assert a single defense.

5. Are there intervening circumstances that make it inequitable to grant relief?

Although it was obligated to do so, Arland has not set forth any "intervening circumstances" that might indicate that extraordinary equitable relief is appropriate. More specifically, Arland has set forth no black letter, legal, or equitable support for its proposition that internal confusion about its contractual obligations to Plaintiff necessitates a reopening of the judgment. The contract at issue in this action was attached to the Complaint, thus alleviating the need for Arland to search for it. It has now had more than five months for its team of two attorneys – Mr. Camilli and Mr. Decator – to review the document and posit some extraordinary circumstance that might indicate that equitable relief would be appropriate. It has not done so.

II. THE COURT HAS PERSONAL JURISDICTION OVER ARLAND

Arland's also argues that the judgment entered against it on February 19, 2013, should be vacated because the Court lacks personal jurisdiction over it as a consequence of insufficiency of service of process. *See* Arland Br. at pp. 3-6. This argument fails because the evidence demonstrates that Arland was properly served under both Wisconsin and Illinois law.

A. Legal Standard with Respect to a Motion to Vacate Judgment for Insufficient Service of Process

Arland correctly asserts that when a party seeks to reopen a default judgment pursuant to an allegation of improper service, the burden of proof is on the moving party. *PHH Mortg. Corp. v. Mattfeld*, 2011 WI App 62, ¶ 8, 333 Wis. 2d 129, 799 N.W.2d 455. In this case, because Arland is a foreign corporation based in Illinois, it could be served under either the appropriate Wisconsin or the Illinois rules. *See* Wis. Stat. § 801.11(5)(c).

Under the Wisconsin rules, a foreign corporation may served by "personally serving the summons upon an officer, director or managing agent" or by leaving a copy "in the office of such officer, director or managing agent with the person who is apparently in charge of the office." Wis. Stat. § 801.11(5)(a). "The use of the word 'apparently' can only refer to what is apparent to the person actually serving the summons." In *Keske v. Square D Co.*, 58 Wis. 2d 307, 313, 206 N.W.2d 189 (1973) (construing Section 262.06(5)(a), which is the predecessor statute to Section 801.11(5)(a)). It is the moving party's burden to establish that the process server's apparent belief was unreasonable. *Hagen v. City of Milwaukee Employe's Retirement System Annuity and Pension Bd.*, 2003 WI 56, ¶¶ 19-20, 262 Wis. 2d 113, 663 N.W.2d 268.

Under the Illinois rules, a private corporation may be served by leaving a copy of the summons and complaint with the registered agent "or any officer or agent of the corporation found anywhere in the State." 735 ILCS 5/2-204. An agent for purposes of service can be almost anyone in the corporation including a clerk, typist, or receptionist, so long as the person understands the importance of the document. *Megan v. L.G. Foster Co.*, 1 Ill. App. 3d 1036, 1038-39, 275 N.E.2d 426 (2nd Dist. 1971) (finding service of process sufficient when made upon a clerk functioning as a receptionist); *United Bank of Loves Park v. Dohm*, 115 Ill. App. 3d 286, 291-92, 450 N.E.2d 974 (2nd Dist. 1983) (finding service of process sufficient when made upon a bank clerk).

B. Service of Process Was Sufficient Under Wisconsin Law.

Arland asserts that service was insufficient under Wisconsin law because "Mr. Bertogli, the employee who signed for the summons on December 24, is clearly not an officer or managing agent" of Arland, and cannot have been construed to be "reasonably in charge of the office." Arland Br. at p. 4. For purposes of this motion, Plaintiff does not dispute that Mr.

Bertogli is not an officer of Arland. However, the relevant credible evidence establishes that he was "the person who . . . [was] apparently in charge of the office." Wis. Stat. § 801.11(5)(a).

Surprisingly, Arland looks to *Horrigan v. State Farm Ins. Co.*, 106 Wis. 2d 675, 317 N.W.2d 474 (1982) for support. Arland's reliance is misplaced. The facts in *Horrigan*, which are analogous to the facts in this case, indicate that service of the summons and complaint by Mr. Osojnak upon Mr. Bertogli was sufficient:

> [The Plaintiff's process server,] Mr. Hartmann went to the State Farm office on May 11, 1979. The reception area was separated from the interior office which housed the claims supervisor. According to State Farm, the receptionist at the office was instructed that if someone came to the office to serve legal process, she was to summon one of the claims' superintendents to the reception area to accept service.
>
> Although Mr. Hartmann stated that he did not know exactly what he said to the receptionist, he testified that he "walked in the door and told the receptionist that [he] had a summons and complaint to serve upon the corporation and [he] would need an officer or agent of the corporation to serve it upon." Mr. Hartmann testified he was then told by the receptionist to "take a seat" and that she would get someone to receive the papers. Soon after he sat down, a man came out from the interior offices into the reception area. Mr. Hartmann handed the summons and complaint to that person who did not question the service or deny that he was the appropriate person to receive it. Mr. Hartmann did not ask this person whether he was there to accept service, whether he was the person summoned by the receptionist, or whether he was in fact authorized to accept service. The process server assumed that the person was there to receive the summons and complaint because of the manner in which he was approached by the recipient

Id. at 678-79.

In this case, Mr. Osojnak entered Arland's offices and was approached by Mr. Bertogli. Mr. Osojnak asked Mr. Bertogli if he could accept service. Mr. Bertogli stated that he did not know, would check, and left the room. Upon his return, Mr. Bertogli informed Mr. Osojnak that he could accept service, and subsequently did. In other words, Mr. Bertogli: 1) was an employee

or agent of Arland,[4] 2) was located in Arland's physical office space, 3) approached the process server upon his entry into the space, 4) checked to confirm that he was permitted to accept service of process, and 5) informed Mr. Osojnak that he was authorized to accept service. As a consequence, it is only reasonable that, from Mr. Osojnak's perspective, Mr. Bertogli was a person "apparently in charge of the office" for purposes of service of process. Arland has not met its burden to establish that such belief on Mr. Osojnak's part was unreasonable, and thus its motion fails with respect to any argument that service was improper under Wisconsin law.

C. Service of Process Was Sufficient Under Illinois Law.

Arland does not argue that service was inappropriate under Illinois law, and as such it should not be permitted to raise such an argument at this eleventh hour. *See Schaeffer v. State Personnel Comm.*, 150 Wis. 2d 132, 144, 441 N.W.2d 292 (Ct.App.1989) (as a general rule, Wisconsin courts do not consider arguments that are undeveloped or first raised in a reply brief). However, even if the Court were to consider such an argument it would be to no avail as service of process was proper under Illinois law.

Like the clerk in *Megan v. L.B. Foster, Co.*, Mr. Bertogli was an intelligent individual in the employ or agency of the defendant corporation being served. Arland has made no argument that Mr. Bertogli did not understand the import or purpose of the summons and complaint. To the contrary, Mr. Bertogli avers that he caused the documents to be immediately delivered to Arland's CFO, Mr. Decator, at the earliest opportunity. *See* Arland Br. at p. 1 and Bertogli Aff.

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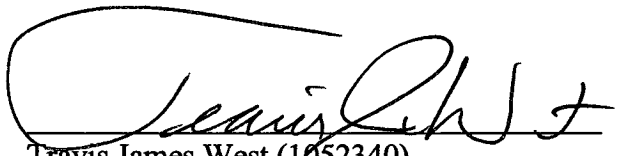
[4] Plaintiff notes that Arland is inconsistent with respect to whether it claims that Mr. Bertogli was an employee of it or of one of its affiliated companies. *Compare* Arland Br. at p. 4 (noting that Mr. Bertogli is an employee) with *Id.* at p. 6 ("Mr. Bertogli is not even an employee") and Bertogli Aff., ¶ 5 ("I am not an employee . . . of Arland Clean Fuels, LLC"). To the extent that Arland intended to assert that Mr. Bertoli is not an employee and that his non-employee status is material, it has not developed such an argument. Regardless, such an argument would be futile as Section 801.11 does not required that a person "reasonably in charge of the office" be an employee. *See Hagen,* 2003 WI 56, ¶¶ 23-25 (whether a person is "reasonably in charge of the office" does not depend upon the employment status but rather on reasonableness of process server's perception of such apparent authority).

at ¶ 14. Accordingly, service was sufficient under Illinois law, that Arland's motion should be denied in such respect.

CONCLUSION

For the reasons set forth above, Plaintiff David Wolf respectfully requests that this Court deny the Defendant's Motion to Vacate Judgment.

Dated this 28th day of May, 2013.



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