

Reversed and Remanded and Opinion filed April 19, 2001.



In The

Fourteenth Court of Appeals

NO. 14-00-00473-CV

LASCO DEVELOPMENT CORP., Appellant

V.

TOD CHADWICK & THE CHADWICK FAMILY TRUST, Appellee

**On Appeal from the 113th District Court
Harris County, Texas
Trial Court Cause No. 99-38712A**

OPINION

Lasco Development Corp. (“Lasco”) brings a restricted appeal from a no-answer default judgment rendered against it in favor of Tod Chadwick and the Chadwick Family Trust (“Chadwick”). Because the record does not show strict compliance with the rules for service, we reverse and remand.

Lasco sold a building to Chadwick. According to Chadwick, the building’s roof leaks due to serious workmanship defects. Chadwick sued Lasco for violations of the Deceptive Trade Practices Act, negligence, and breach of contract. Chadwick contends service was unsuccessfully attempted on Lasco at its registered office. Thereafter, Chadwick was forced

to resort to substituted service through the Secretary of State in accordance with article 2.11(B) of the Texas Business Corporations Act. The Secretary of State mailed a copy of the citation, by certified mail, to Lasco's registered address, 4615 Southwest Freeway, Suite 300, Houston, Texas. The citation was returned to the secretary's office bearing the notation "Undeliverable as Addressed."

Chadwick filed a motion for a final default judgment. The trial court held a default judgment hearing on January 24, 2000. On the same day, the trial court signed an order of final judgment by default, awarding appellees \$5,800 in actual damages, \$7,500 in attorney fees, a conditional award of \$3,000 if any post-judgment action was taken to set aside the judgment, a conditional award of \$7,800 if an appeal was taken, prejudgment interest at the rate of 6% per annum on the sum of \$5,800, post-judgment interest at the rate of 10% per annum from the date of judgment until paid, and all costs of court. Lasco then filed its notice of appeal.

In this restricted appeal, Lasco presents four issues for review: (1) the record does not demonstrate strict compliance with service of process under article 2.11B of the Texas Business Corporations Act; (2) there are no pleadings or proof to support the imposition of additional damages under the DTPA; (3) the record does not contain legally sufficient evidence to support the award of unliquidated damages; and (4) the Chadwicks' violation of rule 239a requires reversal and the Chadwicks' failure to notify Lasco of the hearing for damages or the default judgment violates due process of law. We agree with Lasco that the record does not reflect that the corporation was properly served; thus we need not address Lasco's three remaining issues.

It is well established that the face of the record must show strict compliance with the rules for service in order for a default judgment to withstand direct attack. *Primate Const., Inc. v. Silver*, 884 S.W.2d 151, 152 (Tex. 1994). There are no presumptions in favor of valid service in the face of a direct attack of a default judgment. *Id.* In order to support a default judgment based on substituted service pursuant to article 2.11(B), the record must show that reasonable diligence was used in seeking service on the registered agent of the corporation at

the registered office. *RWL Const., v. Erickson*, 877 S.W.2d 449, 451 (Tex. App.—Houston [1st Dist.] 1994, no writ).

Here, the return of service portion of the citation is blank. However, the bottom margin of the citation contains a handwritten notation that appears to be the name “Reneé Q. Lovelace,” two dates, and two times. Chadwick contends that Lovelace is the name of the process server and that the dates and times specify the occasions of attempted service. While there is nothing in the record to substantiate Chadwick’s contention, even if we accept this premise, the record fails to show reasonable diligence was used in attempting service. In *G.F.S. Ventures, Inc. v. Harris*, the court recognized that a return which stated the date service was attempted, upon whom it was attempted, and the cause of the failure to execute citation, coupled with an affidavit by the deputy who attempted the service demonstrating that she used reasonable diligence in her attempt, constituted a showing of reasonable diligence. 934 S.W.2d 813, 816-17 (Tex. App.—Houston [1st Dist.] 1996, no writ). No equivalent showing has been made here. Without a showing of reasonable diligence, substituted service on the Secretary of State was not permissible.

Accordingly, Lasco’s first issue is sustained; the judgment of the trial court is reversed and the cause is remanded for a new trial.

/s/ J. Harvey Hudson
Justice

Judgment rendered and Opinion filed April 19, 2001.

Panel consists of Justices Anderson, Hudson, and Edelman. (Justice Anderson concurs in the result only.)

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