



By Order of the Court, Judge Joseph N. Camacho

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**FOR PUBLICATION**



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**CNMI SUPERIOR COURT**  
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**IN THE SUPERIOR COURT  
FOR THE  
COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS**

<b>LC RENTAL COMPANY, LLC,</b>	)	<b>CIVIL ACTION NO. 16-0146</b>
	)	
<b>Plaintiff,</b>	)	<b>ORDER AFTER EVIDENTIARY</b>
	)	<b>HEARING GRANTING DEFENDANT’S</b>
<b>v.</b>	)	<b>MOTION TO SET ASIDE DEFAULT</b>
	)	<b>JUDGMENT AS PLAINTIFF FAILED TO</b>
<b>CHINA YANBIAN FOREIGN</b>	)	<b>PROPERLY SERVE THE DEFENDANT,</b>
<b>ECONOMIC &amp; TECHNICAL</b>	)	<b>THEREFORE THE JUDGMENT IS VOID</b>
<b>COOPERATION CORPORATION,</b>	)	<b>PURSUANT TO NMI R. CIV. P. 60(b)(4)</b>
	)	
<b>Defendant.</b>	)	
	)	

**I. INTRODUCTION**

This matter came before the Court on June 5, 2017 at 1:30 p.m. in Courtroom 220 for an evidentiary hearing as to whether Wu Shun Yu was a proper person to receive service for the Defendant, China Yanbian Foreign Economic & Technical Corporation (“China Yanbian”). Attorneys Benjamin K. Petersburg and Mark Hanson appeared for the Plaintiff LC Rental Company, LLC (“LC Rental”). Sang Hun Lee appeared as LC Rental’s representative. Attorney Colin Thompson appeared for the Defendant, China Yanbian.

Based on a review of the filings, oral arguments, and applicable law, the Court makes the following order.

**II. BACKGROUND**

This order is the third in a series of orders regarding service of process in this case. The case involves a dispute regarding rental payments for commercial retail space in the LC Building in

1 Garapan. China Yanbian owns and operates two restaurants, Seoul One Restaurant and Shinsen  
2 Restaurant in the LC Building. Byung Deuk Lee is the president of China Yanbian. Byung Deuk  
3 Lee's son, Sang Hun Lee, is the organizing member of LC Rental Company. Sang Hun Lee was the  
4 manager of the two restaurants until March or April of 2016, when Byung Deuk Lee removed him  
5 from China Yanbian.

6 The summons and complaint in this case were filed with the Court on July 18, 2016. On  
7 July 21, 2016, a copy of the summons and complaint were delivered to Wu Shun Yu, who was  
8 listed as a "general manager" on the proof of service. In her filed affidavit, Wu Shun Yu describes  
9 herself as a waitress at Seoul One Restaurant. Byung Deuk Lee describes Wu Shun Yu as a cook in  
10 his affidavit. When the summons and complaint were delivered to Wu Shun Yu, Byung Deuk Lee  
11 was off-island in South Korea.<sup>1</sup> Sang Hun Lee stated in his declaration that Wu Shun Yu had taken  
12 over management duties in China Yanbian after he was ousted from the organization by his father.

13 LC Rental filed a Motion for Default Judgment on August 12, 2016, and the Court entered a  
14 default judgment on August 26, 2016. China Yanbian subsequently filed Defendant's Motion to Set  
15 Aside the Default Judgment Pursuant to Com. R. Civ. P. 60(b) on September 22, 2016. The Court  
16 ultimately set aside the default judgment on October 27, 2016. *See LC Rental v. China Yanbian*,  
17 Civ. No. 16-0146 (NMI Super. Ct. Oct. 27, 2016) (Order Granting Defendant's Motion to Set Aside  
18 Default Judgment as Plaintiff Failed to Properly Serve the Defendant, Therefore the Judgment is  
19 Void) ("October 27 Order").

20 In the October 27 Order, the Court found that Wu Shun Yu, as a waitress and/or cook, was  
21 not a proper person to receive service under Rule 4(h) of the Commonwealth Rules of Civil

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22 <sup>1</sup> The Court notes that Byung Deuk Lee was ultimately properly served on October 28, 2016, the day after the Court  
23 issued its initial order that set aside the default judgment. Proof of Service (Oct. 28, 2016); *LC Rental v. China Yanbian*,  
24 Civ. No. 16-0146 (NMI Super. Ct. Oct. 27, 2016) (Order Granting Defendant's Motion to Set Aside Default Judgment  
as Plaintiff Failed to Properly Serve the Defendant, Therefore the Judgment is Void).

1 Procedure. October 27 Order at 10. The Court also found that China Yanbian was not properly  
2 served pursuant to the Holdover Tenancy Act. *Id.* at 11. Sang Hun Lee claimed in his declaration  
3 that Wu Shun Yu took over his management duties in March or April of 2016, when his father  
4 removed him from his management position in China Yanbian. In weighing Sang Hun Lee’s  
5 statement in the October 27 Order, the Court noted that “Sang Hun Lee by his own admission was  
6 ousted from the organization by his father. Although Sang Hun Lee claims that Wu Shun Yu is  
7 heavily integrated in China Yanbian’s business affairs, Sang Hun Lee’s statements about Wu Shun  
8 Yu appear to be speculation rather than fact.” *Id.* at 7.

9 LC Rental filed a Motion for Reconsideration on November 14, 2016, arguing that the Court  
10 must reconsider the October 27 Order, since “the order resolved disputed facts as to Wun [sic] Shun  
11 Yu’s capacity to accept service based on conclusory affidavits and without an evidentiary hearing.”  
12 Mot. for Reconsideration at 1. The Court granted the Motion for Reconsideration on April 5, 2017.  
13 *See LC Rental v. China Yanbian*, Civ. No. 16-0146 (NMI Super. Ct. Apr. 5, 2017) (Order Granting  
14 In Part Plaintiff’s Motion for Reconsideration As An Evidentiary Hearing Must Be Conducted As  
15 Sworn Affidavits Alone Are Insufficient to Resolve a Factual Dispute) (“April 5 Order”).

16 The Court held an evidentiary hearing on June 5, 2017. At the evidentiary hearing,  
17 plaintiff’s counsel called Sang Hun Lee, who testified with the assistance of a translator.<sup>2</sup> Sang Hun  
18 Lee lives in the LC Building above the Seoul One Restaurant. China Yanbian owns the Seoul One  
19 Restaurant, the Shinsen Sushi Restaurant, as well as three third floor apartments in the LC Building.  
20 Sang Hun Lee did not live on Saipan when Byung Deuk Lee began running the restaurants. Sang  
21 Hun Lee moved to Saipan in 2008 to help his father manage the businesses, since his father was  
22 suffering from health issues.

23 \_\_\_\_\_  
24 <sup>2</sup> China Yanbian did not call any witnesses.

1 Sang Hun Lee started managing the LC Building and the restaurants in 2008 and he stopped  
2 managing the LC Building and the restaurants in March or April of 2016. Sang Hun Lee testified  
3 that he was not sure why his father removed him as manager. Prior to removing Sang Hun Lee,  
4 Byung Deuk Lee had traveled back and forth between Saipan and South Korea frequently. When  
5 Sang Hun Lee was removed as manager, Byung Deuk Lee was not in Saipan.

6 Sang Hun Lee testified that his duties as manager included managing employees, managing  
7 bookkeeping, purchasing ingredients for the restaurants, taking care of employees' visas, managing  
8 payroll, paying taxes, marketing the restaurants, talking to tour agencies, paying the  
9 Commonwealth Utilities Corporation bill, and handling business documents. Sang Hun Lee worked  
10 with attorneys when there were tax issues with China Yanbian. Although Sang Hun Lee testified  
11 with the assistance of a translator, he says that he speaks enough English to know what to do with  
12 tax documents. Sang Hun Lee also handled obtaining Wu Shun Yu's CW-1 visa, and hired her as a  
13 waitress. Sang Hun Lee also testified that China Yanbian has no "general manager" or "supervisor"  
14 position.

15 According to Sang Hun Lee, Wu Shun Yu is a Chinese citizen who speaks Chinese and  
16 Korean, but only a little English. Sang Hun Lee claims that, after he left China Yanbian, Wu Shun  
17 Yu took over his management duties. Sang Hun Lee did not work in China Yanbian at the time;  
18 instead he apparently obtained his information by living in the LC Building and saying "hi" to  
19 China Yanbian employees in passing.

### 20 III. LEGAL STANDARD

21 China Yanbian brings the present motion under Rule 60(b) of the Commonwealth Rules of  
22 Civil Procedure ("Rule 60(b)"). Rule 60(b) provides:

23 On motion and upon such terms as are just, the court may relieve a party or a party's  
24 legal representative from a final judgment, order, or proceeding for the following

1 reasons: (1) mistake, inadvertence, surprise, or excusable neglect... (4) the judgment  
2 is void.

3 NMIR. Civ. P. 60(b).

4 Typically, to set aside a default judgment under Rule 60(b), the moving party must  
5 establish: “(1) that the plaintiff will not be prejudiced; (2) the existence of a meritorious defense;  
6 and (3) that the default was not the result of the defendant’s culpable conduct.” *Roberto v. De Leon*  
7 *Guerrero*, 4 NMI 295, 297 (1995). Although this test applies generally to Rule 60(b) motions,  
8 motions made specifically under Rule 60(b)(4) alleging that a judgment is void do not require this  
9 inquiry. *Muna v. Commonwealth*, Civ. No. 07-0216 (NMI Super. Ct. Nov. 12, 2009) (Decision and  
10 Order Granting Defendants’ Motion to Quash Service By Publication and For Relief From Entry of  
11 Default Against Dr. Freidrich C. Bieling at 4-5) (“*Muna Order*”).

12 When a judgment is void, the Court has no discretion in determining whether to set the  
13 judgment aside: “Either a judgment is void or it is valid.” *Estate of Ogumoro v. Han Yoon Ko*, 2011  
14 MP 11 ¶ 17 (quoting *Thomas P. Gonzalez Corp. v. Consejo Nacional de Produccion de Costa Rica*,  
15 614 F.2d 1247, 1256 (9th Cir. 1980). When a party makes a motion under Rule 60(b)(4), “there is  
16 no question of discretion on the part of the court.” *Reyes v. Reyes*, 2001 MP 13 ¶ 24 (citing  
17 *Chambers v. Armontrout*, 16 F.3d 257, 260 (8th Cir. 1994)). “Refusing to uphold a void judgment is  
18 not an act of judicial discretion; it is mandatory. The passage of time, in and of itself, does not alter  
19 this.” *Sullivan v. Tarope*, 2006 MP 11 ¶ 35.

20 If a judgment is void due to lack of service, the Court has no jurisdiction over the defendant.  
21 *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988).<sup>3</sup>  
22 Since the Court lacks discretion when a judgment is void, “the relative culpability of the moving

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23 <sup>3</sup> Because the Commonwealth Rules of Civil Procedure are modeled after the Federal Rules of Civil Procedure, federal  
24 cases interpreting the counterpart Federal Rules are helpful in interpreting the Commonwealth Rules of Civil Procedure.  
*In re Adoption of Magofna*, 1 NMI 449, 454 (1990).

1 defendant's conduct in the matter is irrelevant." *Muna* Order at 4-5. Generally, the plaintiff bears  
2 the burden of establishing jurisdiction. *Forsythe v. Overmyer*, 576 F.2d 779, 781 (9th Cir. 1978)  
3 (citing *KVOS, Inc. v. Associated Press*, 299 U.S. 269, 278 (1936)).

#### 4 **IV. DISCUSSION**

5 China Yanbian seeks relief from the default judgment on two grounds: first, that the  
6 judgment is void under Rule 60(b)(4),; and second, that the judgment must be set aside under Rule  
7 60(b)(1) due to China Yanbian's excusable neglect. LC Rental also argued at the June 5, 2017  
8 hearing that China Yanbian bears the burden of proof in a Rule 60(b)(4) motion. Thus the Court  
9 must first address who bears the burden of proof before the Court can address whether the default  
10 judgment is void under Rule 60(b)(4) or whether the judgment must be set aside under Rule  
11 60(b)(1).

##### 12 **A. Burden of Proof**

13 At the June 5, 2017 hearing, LC Rental argued that, since China Yanbian did not present  
14 any witnesses of its own, China Yanbian has not met its burden to establish that service was  
15 improper. The Court notes that the motion to reconsider on the issue of service was granted solely  
16 as to whether an evidentiary hearing was needed to resolve a factual dispute. *See April 5 Order*.

17 Generally, the plaintiff bears the burden of establishing jurisdiction. *Forsythe*, 576 F.2d at  
18 781. Courts are split as to the burden of proof in Rule 60(b)(4) motions where personal jurisdiction  
19 is at issue. *See Ramsay v. Sanibel & Lancaster Ins., LLC*, 2015 U.S. Dist. LEXIS 114096, \*6-8  
20 (D.Va. 2015) (outlining a circuit split regarding the burden of proof in 60(b)(4) motions). Some  
21 courts require that the defendant bear the burden in cases where the defendant had actual notice of  
22 the proceeding. *Id.* at \*7 (citing *SEC v. Internet Solutions for Bus., Inc.*, 509 F.3d 1161, 1163 (9th  
23 Cir. 2007); *Burda Media, Inc. v. Viertel*, 417 F.3d 292, 299 (2d Cir. 2005); *Bally Exp. Corp. v.*  
24 *Balicar, Ltd.*, 804 F.2d 398, 401 (7th Cir. 1986)). In others, the plaintiff maintains the burden of

1 proof. *Id.* (citing *Oldfield v. Pueblo De Bahia Lora, S.A.*, 558 F.3d 1210, 1217 (11th Cir. 2009);  
2 *Arpaio v. Dupre*, 527 F. App'x 108, 113 n.4 (3d Cir. 2013) (unpublished)).

3 This Court has previously stated that: “Notice is not the same thing as proper service  
4 pursuant to the Commonwealth Rules of Civil Procedure.” October 27 Order at 9. In the Court’s  
5 analysis in the October 27 Order, the Court stated that “notice alone is insufficient” to find that  
6 China Yanbian was properly served. October 27 Order at 5. Further, although LC Rental mentioned  
7 the burden of proof in their motion to reconsider, the motion concerned whether the Court should  
8 have held an *evidentiary hearing* as to Wu Shun Yu’s role in China Yanbian, not which party bears  
9 the burden of establishing service. The evidentiary hearing was granted, which effectively brought  
10 the case back to the stage of determining whether service was properly made upon China Yanbian  
11 based upon Wu Shun Yu’s role in China Yanbian. The burden to establish proper service is on the  
12 plaintiff, LC Rental, and remained so at the evidentiary hearing.

### 13 **B. Whether the Judgment is Void**

14 Rule 60(b)(4) allows the Court to relieve a party from a void judgment. NMI R. Civ. P.  
15 60(b)(4). As such, the Court must first decide whether the judgment is void because service was not  
16 proper under Rule 4(h) of the Commonwealth Rules of Civil Procedure (“Rule 4(h)"). If a judgment  
17 is void due to lack of service, the Court has no jurisdiction over the defendant. *Direct Mail*  
18 *Specialists*, 840 F.2d at 688.

19 China Yanbian argues that the judgment must be set aside pursuant to Rule 60(b)(4) since  
20 China Yanbian was not properly served with the summons and complaint under Rule 4(h) of the  
21 Commonwealth Rules of Civil Procedure. If China Yanbian was not properly served, the Court  
22 does not have jurisdiction over it, since the Court “does not have jurisdiction over a defendant  
23 unless the defendant has been served properly under [Rule 4].” *Direct Mail Specialists*, 840 F.2d at  
24 688 (citing *Jackson v. Hayakawa*, 682 F.2d 1344, 1347 (9th Cir. 1982)). Although Rule 4 “is a

1 flexible rule that should be liberally construed so long as a party receives sufficient notice of the  
2 complaint,” notice alone is insufficient. *Id.* (quoting *United Food & Commercial Workers Union v.*  
3 *Alpha Beta Co.*, 736 F.2d 1371, 1382 (9th Cir. 1984)). “Without substantial compliance with Rule  
4 4, ‘neither actual notice nor simply naming the defendant in the complaint will provide personal  
5 jurisdiction.’” *Id.* (quoting *Benny v. Pipes*, 799 F.2d 489, 492 (9th Cir. 1986)).

6 Rule 4(h) of the Commonwealth Rules of Civil Procedure covers service of corporations  
7 and associations. Under Rule 4(h), a domestic corporation may be served:

8 [I]n a jurisdiction of the United States (including the Commonwealth) in the manner  
9 prescribed for individuals by subdivision (e)(1), or by delivering a copy of the  
10 summons and of the complaint to an *officer, a managing or general agent, or to any  
other agent authorized by statute* and the statute so requires, by also mailing a copy to  
the defendant.

11 N.M.I.R. Civ. P. 4(h)(1) (emphasis added). Service may be made “upon a representative so integrated  
12 with the organization that he will know what to do with the papers. Generally, service is sufficient  
13 when made upon an individual who stands in such a position as to render it fair, reasonable and just  
14 to imply the authority on his part to receive service.” *Direct Mail*, 840 F.2d at 688 (quoting *Top  
15 Form Mills, Inc. v. Sociedad Nationale Industria Applicazioni Viscosa*, 428 F.Supp. 1237, 1251  
16 (S.D.N.Y. 1977)). Determining whether an individual is a “‘managing or general agent’ depends on  
17 a factual analysis of that person’s authority within the organization.” *Id.* (citation omitted).

18 The key issue is whether Wu Shun Yu is an individual who is able to properly receive  
19 service for China Yanbian. On July 21, 2016, Mr. Barrineau delivered the complaint and summons  
20 to Wu Shun Yu at the Seoul One Restaurant in Garapan. Proof of Service. On the Proof of Service,  
21 Mr. Barrineau described Wu Shun Yu as the “general manager” of China Yanbian. *Id.*

22 Wu Shun Yu describes herself as a waitress, and stated in her declaration that she does not  
23 speak or understand English. Wu Shun Yu Decl. at 1-2. Byung Deuk Lee describes Wu Shun Yu as  
24 a cook for China Yanbian. On July 21, 2016, Wu Shun Yu says she was given a document during



1 her night shift at the restaurant by “Sang Hun Lee and a short American man with white hair,” and  
2 that Sang Hun Lee asked her to sign the document and give it to Byung Deuk Lee. Wu Shun Yu  
3 Decl. at 2.

4 In his declaration, Sang Hun Lee states that Wu Shun Yu is the manager of both the Seoul  
5 One and Shinsen Sushi Restaurants. Sang Hun Lee Decl. at 3. According to Sang Hun Lee, he was  
6 the manager of the restaurants up until his father, Byung Deuk Lee, removed him as manager in  
7 March or April of 2016. *Id.* According to Sang Hun Lee, after he was removed from China  
8 Yanbian, Wu Shun Yu took over a substantial list of management duties. *Id.* at 3-4.

9 In his testimony on June 5, 2017, Sang Hun Lee outlined his duties as manager of Seoul  
10 One and Shinsen Sushi Restaurants. According to Sang Hun Lee, his duties included managing  
11 employees, managing bookkeeping, purchasing ingredients for the restaurants, taking care of  
12 employees’ visas, managing payroll, paying taxes, marketing the restaurants, talking to tour  
13 agencies, paying the Commonwealth Utilities Corporation bill, and handling business documents.  
14 Sang Hun Lee worked with attorneys when there were tax issues with China Yanbian. Although  
15 Sang Hun Lee testified with the assistance of a translator, he says that he speaks enough English to  
16 know what to do with tax documents. Sang Hun Lee also handled obtaining Wu Shun Yu’s CW-1  
17 visa, and hired her as a waitress. Sang Hun Lee also testified that there are no “general manager” or  
18 “supervisor” positions at China Yanbian.

19 Sang Hun Lee claims that, after he left China Yanbian, Wu Shun Yu took over his  
20 management duties. Sang Hun Lee claimed he learned this information by living in the LC Building  
21 and saying “hi” to China Yanbian employees in passing.

22 The Court finds Sang Hun Lee’s testimony regarding Wu Shun Yu’s role in China Yanbian  
23 lacks detail and substance that would make it credible. Although Sang Hun Lee provided a detailed  
24 list of his own duties as the manager of Seoul One and Shinsen Restaurant, there was no testimony

1 beyond mere speculation that Wu Shun Yu completed the same duties or had the skills, such as  
2 ability to speak English, that were necessary to perform these duties. Sang Hun Lee testified that  
3 Wu Shun Yu was recruited specifically as a waitress with a CW-1 visa. Sang Hun Lee’s only way  
4 of knowing Wu Shun Yu’s duties after he left China Yanbian would be through saying “hi” to  
5 current employees or living upstairs from the restaurants. The Court finds that Sang Hun Lee’s  
6 testimony as to Wu Shun Yu’s duties are speculation on his part.<sup>4</sup>

7           Although Sang Hun Lee claims that Wu Shun Yu is heavily integrated in China Yanbian’s  
8 business affairs, Sang Hun Lee’s statements about Wu Shun Yu appear to be speculation rather than  
9 fact. Thus, the Court will analyze whether Wu Shun Yu, as a waitress/cook, is the proper person to  
10 receive service for China Yanbian.

11           In *Direct Mail Specialists*, a receptionist was found to be a proper individual to receive  
12 service in a small company. 840 F.2d at 688-689. In *Direct Mail Specialists*, the receptionist  
13 “appears to have been the only employee in the office when the process server arrived,  
14 demonstrating that more than minimal responsibility was assigned to her,” considering the small  
15 size of the company. *Id.* In *Direct Mail Specialists*, a manager did eventually receive the  
16 documents, and the company’s attorney “complained about the service of process the day after it  
17 was made.” *Id.*

18           In *Top Form Mills*, a secretary in a two-person office was found to be a proper individual to  
19 receive service. 428 F.Supp. at 1251-1252. Since the secretary in *Top Form Mills* was essentially  
20 the manager’s “right hand man”—she did a wide range of duties related to managing the office,  
21 including but not limited to endorsing checks and writing letters on behalf of the office. *Id.* The *Top*  
22 *Form Mills* court noted that “[i]n view of Ms. Curry’s responsibilities and the indications that she

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24 <sup>4</sup> Defense counsel also highlighted inconsistencies between Sang Hun Lee’s testimony and sworn declaration regarding a \$300,000 loan/gift, which touches upon his credibility.

1 and [her supervisor] alone did much, if not all, of the business activities done for [the company], it  
2 may be properly inferred that she was, in practical effect, if not in formal title, an assistant manager  
3 of the affairs of [the company] and not a mere clerical employee.” *Id.*

4 In *Union Asbestos & Rubber Co. v. Evans Prods. Co.*, service on a secretary was acceptable  
5 where the manager was out of the office “75 to 80 percent of the time” and the secretary  
6 immediately told the manager about the served documents. 328 F.2d 949, 952-953 (7th Cir. 1964).

7 Despite this, a receptionist or secretary in a small company is distinguishable from a  
8 waitress/cook. A receptionist or secretary is the gatekeeper of an office and as a result handles a  
9 great deal of paperwork on behalf of the office, including forwarding incoming communication to  
10 the appropriate managers. Particularly in a small office with limited staff, a secretary or  
11 receptionist’s duties include a fair amount of office administration, managing the daily affairs of the  
12 office when necessary, and handling of important documents. Although Byung Deuk Lee was off-  
13 island receiving medical care at the time of the attempted service, there is no significant credible  
14 evidence that Wu Shun Yu had taken on managerial duties as extensive as that of the receptionist in  
15 *Direct Mail Specialists* or the secretaries in *Top Form Mills* and *Union Asbestos*.

16 The Court notes that Wu Shun Yu did eventually give Byung Deuk Lee the documents on  
17 July 25, 2016. Byung Deuk Lee Decl. at 2; Wu Shun Yu Decl. at 2. Despite this, Wu Shun Yu, a  
18 waitress/cook, is not the proper person to receive service on behalf of China Yanbian. Again, notice  
19 is not the same thing as proper service pursuant to the Commonwealth Rules of Civil Procedure.

20 The Court distinguishes the attempted service of process by Mr. Barrineau from Wu Shun  
21 Yu giving the documents to Byung Deuk Lee. Wu Shun Yu giving the papers to Byung Deuk Lee is  
22 not service of process. At best, Wu Shun Yu’s delivery of the documents is notice, but notice alone  
23 is not service. Wu Shun Yu was not an agent of LC Rental for the purpose of service of process.

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1            “[A]ctual receipt of process by the correct person may be a factor in finding valid process  
2 when there are other factors that make process fair.” *Direct Mail Specialists*, 840 F.2d at 688 (citing  
3 *Top Form Mills*, 428 F. Supp. at 1251; *Nichols v. Surgitool, Inc.*, 419 F.Supp. 58, 63 (W.D.N.Y.  
4 1976)). Those factors are not present here. Service may be made “upon a representative so  
5 integrated with the organization that he will know what to do with the papers.” *Id.* (citation  
6 omitted). Further, “service is sufficient when made upon an individual who stands in such a  
7 position as to render it fair, reasonable and just to imply the authority on his part to receive service.”  
8 *Id.* (citation omitted). Based on the facts before the Court, there is nothing on the record indicating  
9 that Wu Shun Yu was “so integrated with the organization” that she would know what to do with  
10 legal documents. *See Id.* (citation omitted).

11            Wu Shun Yu, in her employment as a waitress/cook, has not assumed duties as extensive as  
12 the receptionist in *Direct Mail Specialists* or the secretaries in *Top Form Mills* and *Union Asbestos*.  
13 Thus, Wu Shun Yu does not occupy a position in China Yanbian that would make it “fair,  
14 reasonable and just to imply the authority on [her] part to receive service.” *Direct Mail Specialists*,  
15 840 F.2d at 688 (citation omitted).

16            Based on these facts, China Yanbian was not properly served pursuant to Rule 4(h) of the  
17 Commonwealth Rules of Civil Procedure since Wu Shun Yu in her capacity as a waitress/cook does  
18 not have sufficient “authority within the organization” to be considered a “managing or general  
19 agent.” *Id.*

20            Since the China Yanbian was not properly served, the default judgment is void. If a  
21 judgment is void due to lack of service, the Court has no jurisdiction over the defendant. *Direct*  
22 *Mail Specialists*, 840 F.2d at 688. Therefore, the Court has no jurisdiction over the Defendant. *See*  
23 *Id.* Thus, the Court need not reach the issue of excusable neglect pursuant to Rule 60(b)(1).

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**V. CONCLUSION**

Accordingly, China Yanbian’s motion to set aside default judgment is **GRANTED**.<sup>5</sup>

**IT IS SO ORDERED** this 14<sup>th</sup> day of July, 2017.

\_\_\_\_\_  
/s/  
**JOSEPH N. CAMACHO**  
Associate Judge

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<sup>5</sup> The Court again notes that Byung Deuk Lee was ultimately properly served on October 28, 2016, the day after the Court issued its initial order that set aside the default judgment. Proof of Service (Oct. 28, 2016); *LC Rental v. China Yanbian*, Civ. No. 16-0146 (NMI Super. Ct. Oct. 27, 2016) (Order Granting Defendant’s Motion to Set Aside Default Judgment as Plaintiff Failed to Properly Serve the Defendant, Therefore the Judgment is Void).