

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

MIGUEL A. BARBOSA,)	
)	Civil Action
Plaintiff)	No. 07-cv-1724
)	
vs.)	
)	
DANA CAPITAL GROUP, INC.;)	
PHOENIX LENDING GROUP, INC.;)	
TRAVIS CARTER;)	
AMERICAN HOME MORTGAGE)	
INVESTMENT CORP.;)	
AMERICAN HOME MORTGAGE;)	
AMERICAN BROKERS CONDUIT;)	
AMERICAN HOME MORTGAGE)	
SERVICING, INC.; and)	
MORTGAGE ELECTRONIC REGISTRATION)	
SYSTEMS, INC.,)	
)	
Defendants)	

* * *

APPEARANCES:

WILLIAM P. COFFIN, ESQUIRE
On behalf of Plaintiff

* * *

O P I N I O N

JAMES KNOLL GARDNER,
United States District Judge

This matter is before the court on plaintiff's Motion for Reconsideration, which motion was filed April 11, 2008, and plaintiff's Motion for Service by Publication Upon Defendant Travis Carter, which motion was filed April 30, 2008.¹ Plaintiff

¹ Given the nature of these motions, which concern service of defendants Phoenix Lending Group, Inc. and Travis Carter, no responses have been filed.

sought leave (1) to effect service on defendant Phoenix Lending Group, Inc. during the week of April 14, 2008, and (2) to serve defendant Travis Carter by publication.

Upon consideration of plaintiff's motions, I grant in part and deny in part plaintiff's Motion for Reconsideration, and I deny plaintiff's Motion for Service by Publication Upon Defendant Travis Carter.

Specifically, I grant plaintiff's Motion for Reconsideration to the extent that it sought leave to serve defendant Phoenix Lending Group, Inc. during the week of April 14, 2008, and deny it to the extent that it seeks leave to serve defendant Travis Carter by publication. I deny plaintiff's Motion for Service by Publication Upon Defendant Travis Carter, which also seeks leave to serve defendant Travis Carter by publication.

PROCEDURAL HISTORY

According to the docket entries and record papers, the pertinent procedural history is as follows.

Plaintiff filed his Complaint on April 30, 2007. Pursuant to Federal Rule of Civil Procedure 4(m), plaintiff was required to serve defendants by August 28, 2007.²

Plaintiff attempted service on defendants Phoenix

² Federal Rule of Civil Procedure 4(m) provides that plaintiff must complete service within 120 days after the Complaint is filed.

Lending Group, Inc. and Travis Carter by certified mail, which was received on May 3, 2007. However, by my December 11, 2007 Order (docket entry number 15) I found that this attempted service was defective because certified mail is not a proper method of service under the federal rules and plaintiff did not comply with the rules for service by mail under the law of Pennsylvania (the state in which this district court is located) or California (the state in which service was attempted). Accordingly, I ordered plaintiff to properly serve defendants Phoenix Lending Group, Inc. and Travis Carter and to file proof of proper service by December 31, 2007, or this action would be dismissed pursuant to Rule 4(m).

On December 28, 2007, plaintiff filed a Motion for Reconsideration of my December 11, 2007 Order. My March 26, 2008 Order granted in part and denied in part plaintiff's Motion for Reconsideration, and ordered plaintiff to properly serve defendants Phoenix Lending Group, Inc. and Travis Carter and to file proof of proper service by April 15, 2008, or this action against these defendants would be dismissed pursuant to Rule 4(m). I noted that because I did not rule on plaintiff's Motion for Reconsideration before the December 31, 2007 service deadline, a brief extension until April 15, 2008 to serve defendants Phoenix Lending Group, Inc. and Travis Carter was appropriate.

On April 8, 2008 and April 9, 2008, plaintiff unsuccessfully attempted personal service on defendant Travis Carter. On April 11, 2008 plaintiff filed the within Motion for Reconsideration of my March 26, 2008 Order seeking leave to serve defendant Phoenix Lending Group, Inc. during the week of April 14, 2008 by serving the owner of defendant Phoenix Lending Group, Inc. and to serve defendant Travis Carter by publication. On April 18, 2008 plaintiff effected service on defendant Phoenix Lending Group, Inc. by delivering a copy of the summons and complaint to defendant's agent. On April 30, 2008 plaintiff filed the within Motion for Service by Publication Upon Defendant Travis Carter seeking leave to serve defendant Travis Carter by publication. As of the date of this Order and Opinion, plaintiff has not provided proof of service upon defendant Travis Carter.

DISCUSSION

Briefing Requirement

Rule 7.1(c) of the Rules of Civil Procedure of the United States District Court for the Eastern District of Pennsylvania ("Local Rules") provides that all motions "shall be accompanied by a brief containing a concise statement of the legal contentions and authorities relied upon in support of the motion." Courts in this District have consistently held the failure to cite any applicable law is sufficient to deny a motion

as without merit because zeal and advocacy is never an appropriate substitute for case law and statutory authority in dealings with the Court. Anthony v. Small Tube Manufacturing Corp., 535 F.Supp.2d 506, 511 n.8 (E.D.Pa. 2007) (Gardner, J.).

Plaintiff's within motions were not accompanied by briefs and therefore do not comply with Local Rule 7.1(c). Accordingly, I could have denied plaintiff's motions for failure to comply with Local Rule 7.1(c). With regard to plaintiff's request to effect service on defendant Phoenix Lending Group, Inc. during the week of April 14, 2008, I exercised my discretion to consider plaintiff's Motion for Reconsideration despite the absence of the required legal briefing, and granted this motion to the extent that it sought leave to serve defendant Phoenix Lending Group, Inc. during the week of April 14, 2008.³

With regard to plaintiff's request to serve defendant Travis Carter by publication, I considered it on the merits even though plaintiff failed to comply with Local Rule 7.1(c)'s briefing requirement. For the reasons which follow, I deny plaintiff's Motion for Service by Publication Upon Defendant Travis Carter, and plaintiff's Motion for Reconsideration to the extent that it seeks to serve defendant Carter by publication.

³ "[A] district court can depart from the strictures of its own local procedural rules where (1) it has a sound rationale for doing so, and (2) so doing does not unfairly prejudice a party who has relied on the local rule to his detriment." United States v. Eleven Vehicles, 200 F.3d 203, 215 (3d Cir. 2000).

Extension of Time for Service

Federal Rule of Civil Procedure 4(m) provides that plaintiff must complete service within 120 days after the Complaint is filed. Here, plaintiff's Complaint was filed on April 30, 2007, so plaintiff was required to serve defendants by August 28, 2007. As discussed above, I twice granted plaintiff extensions of time in which to serve his Complaint (from August 28, 2007 to December 31, 2007, and from December 31, 2007 to April 15, 2008).

Plaintiff's Motion for Reconsideration seeks a further (third) extension of time within which to serve defendant Phoenix Lending Group, Inc. In his motions, plaintiff asserts "that the owner of Defendant Phoenix Lending Group, Inc. will return to the area of Irvine, California during the week of April 14, 2008" and seeks leave to serve this defendant "during the week of April 14, 2008."⁴ Motion for Reconsideration at paragraph 5. Plaintiff served defendant Phoenix Lending Group, Inc. on April 18, 2008 by delivering a copy of the summons and complaint to defendant's agent.

Determining whether to extend the time for service involves a two-step inquiry. Boley v. Kaymark, 123 F.3d 756, 758

⁴ April 14, 2008 was a Monday. Excluding weekend days, the week of April 14 ended Friday, April 18, 2008. As noted above, plaintiff served defendant Phoenix Lending Group, Inc. on Friday, April 18. As noted, the deadline to serve defendants had been extended until Tuesday, April 15, 2008. Hence plaintiff's current extension request was for a very brief three days from Tuesday, April 15 to Friday, April 18, 2008.

(3d Cir. 1997). First, the court must determine whether good cause exists for plaintiff's failure to effect timely service and, if it does, the court must grant the extension. See Fed.R.Civ.P. 4(m); Boley, 123 F.3d at 758. Second, if good cause does not exist, the district court must consider whether to grant a discretionary extension of time. Boley, 123 F.3d at 758.

In determining whether good cause exists, a court's primary focus is on the plaintiff's reasons for not complying with the time limit in the first place. Id. The United States Court of Appeals for the Third Circuit has equated good cause with excusable neglect, which it has described "as requiring a demonstration of good faith on the part of the party seeking an enlargement and some reasonable basis for noncompliance within the time specified in the rules." McCrae v. KLLM Inc., 89 Fed.Appx. 361, 364 (3d Cir. 2004).

Here, plaintiff stated that its process server had been unable to locate defendant Phoenix Lending Group, Inc. and that its owner would return to the Irvine, California area during the week of April 14, 2008. Plaintiff promptly served this defendant on April 18, 2008, during the week of April 14, 2008 for which an extension was requested.

Moreover, I note that plaintiff moved for an extension of time before the deadline for service, a factor which weighs in favor of finding good cause. See McCurdy v. American Board of

Plastic Surgery, 157 F.3d 191, 196 (3d Cir. 1998); Seldon v. Home Loan Services, Inc., 2009 U.S. Dist. LEXIS 5579, *8 (E.D. Pa. January 26, 2009) (Yohn, S.J.).

For these reasons, I conclude that plaintiff has shown good cause for his failure to serve defendant Phoenix Lending Group, Inc. by the April 15, 2008 deadline. Therefore, I granted plaintiff's Motion for Reconsideration to the extent that it sought leave to serve defendant Phoenix Lending Group, Inc. during the week of April 14, 2008, that is, until April 18, 2008.

In any event, even if plaintiff had not established good cause for his failure to timely serve defendant Phoenix Lending Group, Inc., I would have exercised my discretion to grant plaintiff an extension of time to serve this defendant. Even in the absence of good cause, Rule 4(m) gives the district court the discretion to extend plaintiff's time for service. Boley, 123 F.3d at 758. I note that granting this discretionary extension is consistent with the Third Circuit's preference to dispose of cases on the merits. See Seldon, 2009 U.S. Dist. LEXIS 5579 at *11.

Accordingly, I deem timely plaintiff's April 18, 2008 service on defendant Phoenix Lending Group, Inc.

Alternative Service

Federal Rule of Civil Procedure 4(e)(1) permits service by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made."

Pennsylvania law permits service by publication under certain circumstances:

If service cannot be made under the applicable rule the plaintiff may move the court for a special order directing the method of service. The motion shall be accompanied by an affidavit stating the nature and extent of the investigation which has been made to determine the whereabouts of the defendant and the reasons why service cannot be made.

Pa.R.Civ.P. 430(a).

In interpreting Pennsylvania's substitute service statutes we look to the decisions of the Pennsylvania courts because the federal courts are bound by the Pennsylvania courts' interpretations of their own substitute service statutes. See Marshall v. Recinos, 1996 U.S. Dist. LEXIS 8860, *2 (E.D.Pa. June 20, 1996) (Bechtel, S.J.); Phillips v. Flynn, 61 F.R.D. 574, 577 (E.D.Pa. 1974) (Higginbotham, J.).

Pennsylvania permits alternative service "[i]f service cannot be made under the applicable rule." Pa.R.Civ.P. 430(a) (emphasis added). It is clear that alternative service is a "last resort," and is appropriate only when regular service cannot be made. See, e.g., Johnson v. Berke Young International,

LLC, 2007 U.S. Dist. LEXIS 76666, *3 (E.D. Pa. October 12, 2007) (Kauffman, J.); Accu-Tech Corp. v. Network Technologies Group, Inc., 2005 U.S. Dist. LEXIS 11940, *2 (E.D. Pa. June 17, 2005) (Bartle, J.); Grove v. Guilfoyle, 222 F.R.D. 255, 257 (E.D. Pa. 2004) (Rufe, J.). Service by publication is an "extraordinary" measure. Fusco v. Hill Financial Savings Association, 453 Pa. Super. 216, 221, 683 A.2d 677, 680 (1996); Countrywide Home Loans, Inc. v. Stringer, 2008 U.S. Dist. LEXIS 62670, *6 (M.D. Pa. August 15, 2008); First Pennsylvania Bank, N.A. v. Drucker, 1991 U.S. Dist. LEXIS 2151, *2 (E.D. Pa. February 21, 1991) (Shapiro, J.).

District courts in the Third Circuit have repeatedly held that a plaintiff moving for alternative service, such as service by publication, must establish three elements: (1) a good faith effort to locate the defendant; (2) practical efforts to serve the defendant under the circumstances; and (3) a method of alternative service that is reasonably calculated to provide the defendant with notice.⁵ See, e.g., Morgan Truck Body, LLC v.

⁵ Other district courts in the Third Circuit have required that the plaintiff show an unsuccessful attempt to properly serve the defendant, in place of the practical efforts to serve the defendant under the circumstances prong. See, e.g., Countrywide Home Loans, Inc., *supra* at *6; HSBC Bank USA, N.A. v. Williams, 2007 U.S. Dist. LEXIS 97423, *4 (M.D. Pa. November 7, 2007); Ayr Motor Express, Inc. v. Keystone Transportation Services, Inc., 1998 U.S. Dist. LEXIS 2300, *3-4 (E.D. Pa. March 4, 1998) (Hutton, J.).

These two approaches are very similar. See Countrywide Home Loans, Inc., *supra* at *7 n.5. However, I believe that the "practical efforts to serve the defendant under the circumstances" version of this test is superior to the "unsuccessful attempt to properly serve the defendant" alternate version because it more clearly reflects that the plaintiff is required to make multiple attempts to serve the defendant, as discussed below.

Integrated Logistics Solutions, LLC, 2008 U.S. Dist. LEXIS 21962, *19-20 (E.D. Pa. March 20, 2008) (Stengel, J.); Johnson, supra; Premium Payment Plan v. Shannon Cab Co., 2007 U.S. Dist. LEXIS 58886, *4-5 (E.D. Pa. August 13, 2007) (Pollak, J.); Calabro v. Leiner, 464 F. Supp. 2d 470, 470-471 (E.D. Pa. 2006) (Robreno, J.). Here, as discussed below, I find that plaintiff has failed to establish any of the three required elements for alternate service by publication on defendant Travis Carter.

Good Faith Effort

First, plaintiff must make a good faith effort to locate and serve the defendant. The note accompanying Pennsylvania Rule of Civil Procedure 430(a) provides an illustration of a good faith effort to locate a defendant, which includes making:

- (1) inquiries of postal authorities including inquiries pursuant to the Freedom of Information Act, 39 C.F.R. Part 265,
- (2) inquiries of relatives, neighbors, friends, and employers of the defendant, and
- (3) examinations of local telephone directories, voter registration records, local tax records, and motor vehicle records.

Pa.R.Civ.P. 430(a), note. See, e.g., Deer Park Lumber, Inc. v. Major, 384 Pa. Super. 625, 633, 559 A.2d 941, 946 (1989); Grove, 222 F.R.D. at 256-257.

However, this illustration is "by no means exhaustive." Deer Park Lumber, Inc., 384 Pa.Super. at 633, 559 A.2d at 946; see, e.g., Grove, 222 F.R.D. at 256. Notably, courts applying Rule 430(a) have suggested that a good faith effort to locate and serve the defendant may also include searching the Internet,⁶ calling telephone directory assistance,⁷ and hiring private investigators or skip tracer services.⁸

Although a plaintiff is not required to utilize all of these methods to satisfy the good faith effort requirement, Calabro, 464 F.Supp.2d at 472; Vinson v. National Freight, Inc., 1986 U.S.Dist. LEXIS 25696, *4 (E.D.Pa. May 9, 1986) (McGlynn, J.), it is clear that "more than a mere paper search is required" before service by publication will be permitted. Deer Park Lumber, Inc., 384 Pa.Super. at 633, 559 A.2d at 946. See, e.g., Fusco, 453 Pa.Super. at 222, 683 A.2d at 681; Grove, 222 F.R.D. at 256. When a plaintiff fails to utilize most of these methods, he will not be able to show that regular service cannot be made. Johnson, 2007 U.S.Dist. LEXIS 76666 at *4; cf. Grove, 222 F.R.D. at 257.

⁶ See Accu-Tech Corp., supra; Long v. Polidori, 2003 U.S.Dist. LEXIS 9262 (E.D.Pa. May 29, 2003) (Kelly, S.J.).

⁷ See Accu-Tech Corp., supra; Clayman v. Jung, 173 F.R.D. 138, 139-140 (E.D.Pa. 1997) (Dalzell, J.) (citing Kittanning Coal Co. v. International Mining Co., 551 F.Supp. 834 (W.D.Pa. 1982)).

⁸ See Johnson v. Jackson, 2004 U.S.Dist. LEXIS 463 (E.D.Pa. January 6, 2004) (Rufe, J.); Long, supra; Gray v. Power, 1996 U.S.Dist. LEXIS 658, *10 (E.D.Pa. January 17, 1996) (Welsh, M.J.).

Here, there is no indication that plaintiff took any of these steps to locate defendant Travis Carter. Indeed, there is nothing on the record to indicate that plaintiff did anything to locate Travis Carter. Plaintiff has clearly failed to make the required good faith effort to locate him.

Affidavit Requirement

Plaintiff's motion for service by publication must include an affidavit demonstrating that plaintiff made this good faith effort to locate the defendant. See Countrywide Home Loans, Inc., 2008 U.S. Dist. LEXIS 62670 at *11 n.9; Long, 2003 U.S. Dist. LEXIS 9262 at *2.

Pennsylvania Rule of Civil Procedure 430(a) provides that the motion for service by publication "shall be accompanied by an affidavit stating the nature and extent of the investigation which has been made to determine the whereabouts of the defendant and the reasons why service cannot be made." "[A] plaintiff must provide, along with the motion, an affidavit stating the nature and extent of the investigation undertaken to locate the defendant.... Only after such proof has been offered is the court authorized to direct publication or another method of substitute service." Deer Park Lumber, Inc., 384 Pa. Super. at 631, 559 A.2d at 944 (emphasis added); PNC Bank, N.A. v. Unknown Heirs, 929 A.2d 219, 229 (Pa. Super. 2007) (emphasis added). See,

e.g., Morgan Truck Body, LLC, 2008 U.S. Dist. LEXIS 21962 at *19; Johnson, 2007 U.S. Dist. LEXIS 76666 at *2-3; Vlahovic v. Heron, 1992 U.S. Dist. LEXIS 872, *1-2 (E.D. Pa. January 27, 1992) (Waldman, J.).

Plaintiff's affidavit must provide extensive details about the nature and extent of plaintiff's investigation and the reasons that service cannot be made. See Countrywide Home Loans, Inc., supra at *12-13 n.9; see also Flannigan v. Borough of Ambridge, 2007 U.S. Dist. LEXIS 7312, *3-4 (W.D. Pa. February 1, 2007); Penn v. Raynor, 1989 U.S. Dist. LEXIS 12549, *6-7 (E.D. Pa. October 18, 1989) (VanArtsdalen, S.J.).

In the instant matter, plaintiff did not file an affidavit in support of his motion for service by publication at all. Thus, plaintiff has completely failed to satisfy the good faith affidavit requirement.

Because all three elements of the three-prong test for authorization of alternate service must be established, plaintiff's failure to establish the first prong (a good faith effort to locate the defendant) is fatal to his request for alternate service on Travis Carter. Nevertheless, as indicated below, plaintiff is unable to establish any of the required elements.

Practical Efforts

Second, plaintiff must make practical efforts to serve the defendant under the circumstances. Half-hearted attempts to serve will not satisfy this requirement. Calabro, 464 F.Supp.2d at 473.

Plaintiffs are required to make multiple attempts to serve defendants. See Banks v. Alvarez, 2008 U.S. Dist. LEXIS 49954, *5 (E.D.Pa. June 30, 2008) (Hey, M.J.); Ayr Motor Express, Inc., 1998 U.S. Dist. LEXIS 2300 at *4-5. Moreover, "[d]epending on the defendant's situation, circumstances may warrant, for example, visiting the defendant's location on different days of the week, or at different times of day." Premium Payment Plan, 2007 U.S. Dist. LEXIS 58886 at *4-5; Calabro, 464 F.Supp.2d at 472.

Courts in this district have held that nine attempts to serve are sufficient, Ayr Motor Express, Inc., 1998 U.S. Dist. LEXIS 2300 at *5, but have found three attempts to serve insufficient where two of the attempts occurred on the same day of the week and two of the attempts were made at the same time of day. Calabro, 464 F.Supp.2d at 473.

Here it appears that plaintiff initially attempted to serve defendant Travis Carter by certified mail which was received on May 3, 2007 (docket entry number 3), but my December 11, 2007 Order found this attempt at service to be

defective because certified mail is not a proper method of service under the federal rules and plaintiff did not comply with the rules for service by mail under the law of Pennsylvania (the state in which this district court is located) or California (the state in which service was attempted). Plaintiff appears to have thereafter twice attempted personal service on defendant Carter (docket entry number 23).

On Tuesday, April 8, 2008, plaintiff attempted to serve defendant Carter at Phoenix Lending Group's offices, but found them to be vacant. The next day, plaintiff attempted to serve defendant Carter at Phoenix Lending Group's new address, but there was no record of a Travis Carter employed with the company (docket entry number 23).

Plaintiff's efforts to serve defendant Carter have been insufficient. After plaintiff's service by mail was found to be defective, plaintiffs made only two attempts to serve defendant Carter. These attempts were made on consecutive days, and the first of these attempts was made at an office that turned out to be vacant. There is no indication that plaintiff attempted to serve defendant Carter at his home or at the offices of his new employer. Therefore, I find that plaintiff has not made the required practical efforts to serve the defendant under the circumstances.

Reasonably Calculated Notice

Third, plaintiff's method of service must be reasonably calculated to provide the defendant with notice.

For the court to determine whether service by publication is reasonably calculated to provide the defendant with notice, the plaintiff must specify the newspapers in which he intends to publish notice. See Penn, 1989 U.S. Dist. LEXIS 12549 at *10 n.3. Pennsylvania requires that service by publication be made "by advertising a notice of the action once in the legal publication, if any, designated by the court for the publication of legal notices and in one newspaper of general circulation within the county." Pa.R.Civ.P. 430(b)(1).

Service by publication will be permitted "only where the court is convinced that the published notice is placed where it is most likely to be seen by the defendant. A showing that the method of service requested is calculated to notify the defendant of the action is an essential component of any supporting affidavit." Flannigan, 2007 U.S. Dist. LEXIS 7312 at *5.

For service by publication to be reasonably calculated to provide notice, publication must be made both in the county of the incident and the county of the defendant's last known address. See Levin v. Richter, 1991 U.S. Dist. LEXIS 1287, *3-4

(E.D.Pa. February 4, 1991) (Kelly, J.); Kittanning Coal Co., 551 F.Supp. at 838-839; see also Romeo v. Looks, 369 Pa.Super. 608, 618-619, 535 A.2d 1101, 1106-1107 (1987); Clayman, 173 F.R.D. at 140.

In addition, the plaintiff must have specific information about where the defendant lives or works for service by publication to be reasonably calculated to provide the defendant with notice. See Long, 2003 U.S. Dist. LEXIS 9262 at *5; Clayman, 173 F.R.D. at 140-142; see also Banks, 2008 U.S. Dist. LEXIS 49954 at *6. Merely publishing in a widely circulated publication will not suffice. See Clayman, 173 F.R.D. at 141.

Here, plaintiff did not file the required affidavit and did not name appropriate publications in his motions for reconsideration and for service by publication. In the proposed order attached to plaintiff's motion for service by publication, plaintiff appears to suggest that I order "publication one time in a paper of general circulation, i.e. The Express-Times and one time in the Northampton County Reporter." (Docket entry number 24-2). However, I find that publication solely in Northampton County, Pennsylvania newspapers is not reasonably calculated to provide defendant Travis Carter with notice of this action.

Plaintiff has provided absolutely no information as to what connection, if any, defendant Travis Carter has to

Northampton County, Pennsylvania. Plaintiff's Complaint alleges that defendant Carter is an employee of Phoenix Lending Group, Inc., a corporation with its principal place of business in Irvine, Orange County, California. See Complaint at paragraphs 3 and 4. Plaintiff's attempts to serve defendant Carter were all made in Irvine. (See docket entry numbers 3 and 23.)

Plaintiff has given no indication that defendant Carter has moved from Orange County, California to Northampton County, Pennsylvania, or that defendant Carter now works for a Northampton County employer. Thus, it would appear that defendant Carter's last known address is in Orange County.

Because plaintiff does not propose publication in the county of defendant Carter's last known address, I find that plaintiff's proposed service by publication is not reasonably calculated to provide defendant Carter with notice of this action. Moreover, because plaintiff's efforts to locate defendant Carter were woefully deficient, as discussed above, "there is no way of knowing what publication or publications are likely to reach" him. First Pennsylvania Bank, N.A., 1991 U.S. Dist. LEXIS 2151.

Dismissal of Defendant Carter

As discussed above, plaintiff initiated this case by filing his Complaint on April 30, 2007 and was required to serve

defendants by August 28, 2007. On December 11, 2007, I found that plaintiff's initial attempt to serve defendant Travis Carter by certified mail was defective and ordered plaintiff to serve him by December 31, 2007, or plaintiff's claims against Travis Carter would be dismissed. My March 26, 2008 Order extended plaintiff's deadline to serve defendant Carter a second time until April 15, 2008, and I again advised plaintiff that his claims against defendant Carter would be dismissed if service was not made.

More than twenty months have now elapsed since plaintiff's initial, defective attempt to serve defendant Travis Carter. The record in this case is devoid of any indication that plaintiff took any steps whatsoever to effect service on defendant Carter between May 2007 and April 2008. In April 2008, plaintiff made two unsuccessful attempts to personally serve defendant Carter and filed two motions requesting leave to serve him by publication. There is no indication that plaintiff took any further steps to effect service on defendant Travis Carter since then.

As discussed at length above, plaintiff's requests for service by publication are wholly deficient: Plaintiff did not undertake a good faith effort to locate defendant Travis Carter, did not use practical efforts to serve him under the circumstances, did not propose a method of alternative service

reasonably calculated to provide notice of this action, and did not submit the mandatory good faith affidavit.

Accordingly, I dismiss all claims against defendant Travis Carter and dismiss defendant Carter from this action pursuant to Federal Rule of Civil Procedure 4(m).

CONCLUSION

For the reasons expressed above, I grant in part and deny in part plaintiff's Motion for Reconsideration, and I deny plaintiff's Motion for Service by Publication Upon Defendant Travis Carter.

Specifically, I grant plaintiff's Motion for Reconsideration to the extent that it seeks leave to serve defendant Phoenix Lending Group, Inc. during the week of April 14, 2008, and deny it to the extent that it seeks to serve defendant Travis Carter by publication. I deny plaintiff's Motion for Service by Publication Upon Defendant Travis Carter.