

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
FT. MYERS DIVISION**

GMAC REAL ESTATE, LLC a Delaware  
Limited Liability Company,

Plaintiff,

v.

CASE NO. 2:09-cv-546-FtM-36SPC

WATERFRONT REALTY GROUP, INC., a  
Florida Corporation, JACK NEWBY, an individual,  
RICK NEWBY, an individual,

Defendants.

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**ORDER**

This cause comes before the Court upon the Report and Recommendation of Magistrate Judge Sheri Polster Chappell (Doc. 36) filed on July 2, 2010. In the Report and Recommendation, Judge Chappell recommends that Plaintiff's claims against Defendant Rick Newby be dismissed without prejudice due to Plaintiff's failure to serve Defendant Rick Newby. Plaintiff has not filed an objection to the Report and Recommendation, and the time for doing so has expired.

Plaintiff filed its Verified Complaint on August 19, 2009 (Doc. 1). On September 29, 2009, Defendant Rick Newby was served with the Summons and Complaint. But on November 2, 2009, the Court granted Defendant Rick Newby's Motion to Quash Service based on the fact that the name and address of Plaintiff's Counsel were missing on the Summons in violation of Rule 4(a)(C) (Doc. 16). Plaintiff was given until November 19, 2009 to re-serve Defendant Rick Newby in a manner consistent with the Federal Rules of Civil Procedure. After Plaintiff failed to effect proper service upon Defendant Rick Newby, within the time provided, the Court issued an Order to Show Cause

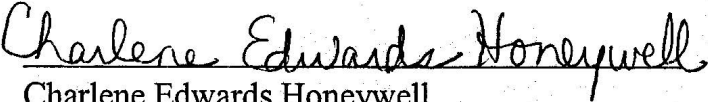
on April 15, 2010 (Doc. 29). On April 28, 2010, Plaintiff responded that it was continuing to attempt service (Doc. 32), and Plaintiff was given until May 31, 2010 to effect service upon Defendant Rick Newby (Doc. 33). Plaintiff again failed to effect service upon Defendant Rick Newby, and on June 7, 2010, Plaintiff requested the appointment of a special process server and an additional 30 days to effect proper service (Doc. 34). On June 15, 2010, the Court denied Plaintiff's request for a special process server, and directed Plaintiff to effect proper service on Defendant Rick Newby by June 29, 2010 (Doc. 35). Plaintiff has not effected service on Defendant Rick Newby.

After careful consideration of the Report and Recommendation of the Magistrate Judge in conjunction with an independent examination of the court file, the Court is of the opinion that the Magistrate Judge's Report and Recommendation should be adopted, confirmed, and approved in all respects.

**ACCORDINGLY, it is now ORDERED AND ADJUDGED:**

1. The Report and Recommendation of the Magistrate Judge (Doc.36) is **ADOPTED, CONFIRMED and APPROVED** in all respects and is made a part of this Order for all purposes, including appellate review.
2. This action is **DISMISSED**, without prejudice, as to Defendant Rick Newby for failure to effect proper service. The Clerk is directed to enter judgment accordingly as to Defendant Rick Newby.

**DONE AND ORDERED** at Ft. Myers, Florida, on July 26, 2010.

  
Charlene Edwards Honeywell  
United States District Judge

**COPIES TO:**

Magistrate Judge Sheri Polster Chappell  
Counsel of Record