

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

VICTOR VAZQUEZ, an individual

Plaintiff,

v.

Case No: 2:15-cv-661-FtM-38CM

LEE COUNTY, FLORIDA BOARD
OF COUNTY COMMISSIONERS,

Defendant.

_____ /

ORDER¹

This matter comes before the Court on Defendant Lee County, Florida Board of County Commissioners' Motion to Dismiss ([Doc. #9](#)) filed on February 23, 2016. Plaintiff Victor Vazquez filed a Response in Opposition ([Doc. #12](#)) on March 3, 2016. The matter is ripe for review.

Discussion

In April 2015, the Supreme Court adopted amendments to the Federal Rules of Civil Procedure, including changing the timeframe for service under [Rule 4\(m\)](#) from 120 days to 90 days. These amendments took effect on December 1, 2015. Plaintiff initiated this action on October 23, 2015, more than a month before the amendments became effective. ([Doc. #1](#)). Yet Plaintiff waited 102 days, until February 2, 2016, to serve Defendant. ([Doc. #8](#)). Astutely noting that the Court may apply either version of [Rule](#)

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4(m) on these facts, Defendant asks the Court to retroactively apply the recently-amended version of Rule 4(m) and dismiss Plaintiff's Complaint for failing to provide timely service. (Doc. #9). While district courts maintain discretion to entertain such requests, the Court declines to do so. See *Silvious v. Pharaon*, 54 F.3d 697, 700 (11th Cir. 1995) (explaining, in the context of previous amendments, that district courts may apply either the rule in effect when the complaint was filed or the rule in effect when service was attempted or completed). The Court finds the pre-amended version of Rule 4(m), allowing 120 days for service, is just and practicable for this action. Therefore, because Plaintiff timely served Defendant within 120 days, Defendant's Motion will be denied.

Accordingly, it is now

ORDERED:

Defendant Lee County, Florida Board of County Commissioners' Motion to Dismiss (Doc. #9) is **DENIED**. Defendant has fourteen (14) days to answer or otherwise respond to this action.

DONE and **ORDERED** in Fort Myers, Florida, this 1st day of April, 2016.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record