

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

KOZMA INVESTMENTOS, LTDA, a
foreign corporation

Plaintiff,

v.

Case No: 2:17-cv-306-FtM-99CM

EDSON PEREIRA DUDA,
NATALINA SACCHI DUDA and
GEBY INVESTMENTS, LLC,

Defendants.

ORDER¹

This matter comes before the Court on review of the file. Specifically, the Court addresses service issues with Defendants Edson Pereira and Natalina Sacchi Duda, who purportedly reside in Brazil (the “foreign Defendants” or “Dudas”). In response to the Court’s September 6, 2017 Order to Show Cause as to why the foreign Defendants had not yet been served (Doc. 40), Plaintiff responded that the 90-day time period set forth in [Federal Rule of Civil Procedure 4\(m\)](#) did not apply to service in a foreign country, which is governed by [Federal Rule of Civil Procedure 4\(f\)](#). Thus, the Court noted that it would take no further action on the Order to Show Cause, directing Plaintiff to serve the foreign Defendants within the time period allowed by the Federal Rule of Civil Procedure. (Doc.

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42). In its Response, filed on September 6, 2017, Plaintiff stated that it expected that service on the Dudas would be accomplished in the next 30 days. (Doc. 41, ¶ 7). To date, no return of service has been filed; therefore, the Court finds that active judicial management of the deadline to serve the Dudas would be best.

Although Rule 4(m)'s time limit for service of process does not apply to service in a foreign country, the Eleventh Circuit has noted that the time period for service under Rule 4(f) is not unlimited. See *Harris v. Orange S.A.*, 636 F. App'x 476, 485 (11th Cir. 2015). In *Harris*, the court recognized that most courts confronted with the timeliness of foreign service have applied a "flexible due diligence standard" to determine whether delay should be excused. *Id.* "We thus join the majority of circuits to have considered the issue in holding that a plaintiff's complaint may be dismissed upon a showing that she failed to exercise diligence in attempting to effectuate service on a foreign defendant." *Id.* at 485-86.

Here, Plaintiff filed its Complaint on May 8, 2017, and shortly thereafter attempted to locate the Dudas. (Doc. 13, Doc. 14). Unable to do so, it requested leave to serve the Dudas by publication. (Doc. 29). That request was denied as moot because Defendant Geby Investments, LLC agreed to provide the Dudas' address in Brazil. (Doc. 30). Since that time, Plaintiff states that it has forwarded the appropriate service documents so that service may be completed at the Brazilian address. (Doc. 41, ¶ 8). Therefore, based upon the information currently before the Court it cannot say that Plaintiff has thus far showed a lack of diligence in attempting to serve the Dudas. That being said, Plaintiff has not updated the Court since its last filing when it indicated that service could be

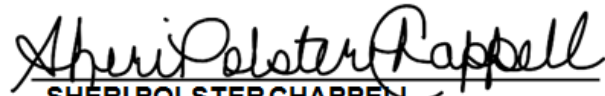
accomplished in 30 days. Therefore, the Court will impose a deadline for service. Any request for an extension must set forth diligent efforts towards service.

Accordingly, it is now

ORDERED:

Plaintiff shall have up to and including **November 13, 2017** to serve Defendants Edson Pereira and Natalina Sacchi Duda. **Failure to do so could result in this Court dismissing Plaintiff's claims against the Dudas.**

DONE and **ORDERED** in Fort Myers, Florida this 31st day of October, 2017.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record