

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**HEATHER MARIE KOTIS and RACHEL
CHRISTINE MILL**

Plaintiffs,

v.

CASE NO.: 8:07-00447-JSM-EAJ

**DESLIN HOTELS, INC., IRENE L. DEVLIN,
DENNIS B. DEVLIN, GOLDRUSH DISC JOCKEYS, INC.,
DAVID L. BARTON, BV & BK PRODUCTIONS, LLP,
CHAD W. CIANI, MRA HOLDINGS, LLC, AMX
PRODUCTIONS, LLC, d/b/a AMX Video, a/k/a GM Video,
a/k/a George Martin Video a/k/a Action Matrix, a/k/a Aztec
Media Co., MANTRA FILMS, INC., d/b/a Girls Gone Wild,
JOSEPH R. FRANCIS, SVOTHI, INC., d/b/a PPVNetworks
and nakedontv.com; and JUCCO HOLDINGS, INC.,
d/b/a drunkspringbreak.com,**

Defendants.

MOTION TO EXTEND TIME FOR SERVICE OF COMPLAINT

Plaintiffs, by and through their undersigned counsel and pursuant to Fed. R. Civ. P. 4(m), hereby move this Court for the entry of an Order extending the time for service of the complaint on Defendants MRA Holdings, L.L.C., AMX Productions, L.L.C. and Joseph R. Francis, for a period of 25 days. In support of this Motion, Plaintiffs refer the Court to the memorandum, below:

SUPPORTING MEMORANDUM

Rule 4(m) of the Federal Rules of Civil Procedure provides that the summons and complaint shall be served on a defendant within 120 days after the filing of the complaint. If the deadline is not met, the Rule allows for the Court to direct that service be effected

within a specified time. The complaint in this action was filed on March 12, 2007. All defendants have been served with the summons and complaint except for MRA Holdings, L.L.C., AMX Productions, L.L.C. and Joseph R. Francis. Under Rule 4(m), the deadline to serve these defendants is July 10, 2007.

Plaintiffs respectfully request an extension of time in which to serve MRA Holdings, L.L.C., AMX Productions, L.L.C. and Joseph R. Francis. Plaintiffs make this request in good faith and have good cause for the relief they seek. Plaintiffs have attempted to serve these defendants, without success. Moreover, Plaintiffs' co-counsel, the Solomon Tropp Law Group, who handled service of the summons and complaint on all defendants and was to be lead trial counsel, filed a motion to withdraw on June 21, 2007, requiring Plaintiffs to seek new co-counsel. Plaintiffs are in the process of retaining new lead trial counsel. Due to these developments, as of this date, Plaintiffs have been unable to effect service of the summons and complaint on MRA Holdings, L.L.C., AMX Productions, L.L.C. and Joseph R. Francis.

In addition, the statute of limitations may have run on Plaintiffs' claims against MRA Holdings, L.L.C., AMX Productions, L.L.C. and Joseph R. Francis. The statute of limitations on Plaintiffs' claims is prescribed by 18 U.S.C. § 2255(b), which provides that a complaint must be filed within six years after the right of action first accrues or within three years after a legal disability. The events involved in this action occurred in late March 2001. If Plaintiffs are not allowed an extension of time in which to serve the two remaining defendants, through no fault of their own, their claims against these defendants could be time-barred.

In *Horenkamp v. Van Winkle and Co., Inc.*, 402 F.3d 1129 (11th Cir. 2005), the

Eleventh Circuit upheld the denial of a defendant's motion to dismiss the complaint after the plaintiff failed to timely serve it with process. Although the trial court found that the untimely service was a mistake, it noted that dismissing the complaint, even without prejudice, would foreclose the plaintiff's claims because the statute of limitations had run. *Id.* at 1130, 1133. In affirming the district court's decision, the Court held that Rule 4(m) grants discretion to the district court to extend the time for service of process even in the absence of a showing of good cause, and noted that a barring of the claims by the statute of limitations would justify allowing an extension for service of process. *Id.* at 1132-1133. *See also Lepone-Dempsey v. Carroll County Commissioners*, 476 F.3d 1277 (11th Cir. 2007)(holding that even absent a showing of good cause for failure to timely serve process, the district court must still consider whether other circumstances warrant an extension of time).

Based on the foregoing, Plaintiffs respectfully request that this Court enter an Order allowing them an additional 25 days, through and including August 6, 2007, in which to serve the summons and complaint on Defendants MRA Holdings, L.L.C., AMX Productions, L.L.C. and Joseph R. Francis.

The undersigned certifies that counsel for Defendants Mantra Films, Inc., Deslin Hotels, Inc., Irene L. Devlin, Dennis B. Devlin, BV & BK Productions, LLP, Chad W. Ciani and Svothi, Inc. have been consulted and have advised that they do not object

to the granting of this Motion.

Respectfully submitted,

/s/Richard S. Shankman
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 9, 2007 the foregoing motion was electronically filed with the Clerk of the Court using the CM/ECF system which will send a notice of electronic filing to the following:

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