

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

MOUNT VERNON FIRE  
INSURANCE COMPANY,

Plaintiff,

v.

Case No. 8:09-cv-00499-SCB-TBM

JIM-N-I INVESTMENTS, INC. d/b/a  
Tootsie's and/or Sugar Shack,  
5636 E HILLSBOROUGH AVENUE INC.,  
5634 EAST HILLSBOROUGH AVENUE INC.  
d/b/a/ Tootsie's and/or Sugar Shack,  
TIA FINA'S, INC. d/b/a Sugar Shack,  
ADAMA RICH, DONALD MONTANEZ,  
CERTIFIED IMPOUND SERVICE, INC.,  
PRIVATE PROPERTY/COMMERCIAL, INC.,  
GENERAL MANAGEMENT AND  
DEVELOPMENT CORP., and KANE  
FURNITURE CORPORATION,

Defendants.

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**ORDER**

The Court now considers Plaintiff's second Motion for Enlargement of Time to Serve Defendant Donald Montanez. (Doc. 58.)

Plaintiff filed this Complaint on March 18, 2009. Pursuant to Federal Rule of Civil Procedure 4(m), this Court must dismiss an action without prejudice against a Defendant who was not served within 120 days of the filing of the Complaint unless Plaintiff shows good cause for the failure to serve.

Plaintiff failed to serve Defendant Donald Montanez within 120 days as required by Rule 4(m), and Plaintiff failed within 120 days to move for an extension of time for service and show good cause why the Court should extend the time for service.

On August 12, 2009, Plaintiff filed a Motion for Enlargement of Time to serve Donald Montanez and a second defendant, Adama Rich. (Doc. 24). Plaintiff explained that a process server had repeatedly attempted to serve Defendant Donald Montanez. Plaintiff requested an additional 90 days beyond the 149 days that had already transpired to complete service.

On August 14, 2009, the Court granted a 30-day extension to serve Donald Montanez and Adama Rich. The Court gave Plaintiff until September 14, 2009 to serve both defendants. Plaintiff filed a return of service of Adama Rich on September 14, 2009 and sought a second extension to serve Donald Montanez on the same day.

Plaintiff's process server has attempted to serve Mr. Montanez five times at his place of work, a secured vehicle impound lot. *See* Affidavit of Carlos N. Damico, Certified Process Servicer. (Doc. 58). A second process servicer has been unable to locate Mr. Montanez's home address. *See* Affidavit of Richard Bracewell, Certified Process Servicer. (Doc. 58).

Both process servers state that Mr. Montanez is scheduled to appear on September 24, 2009 and October 1, 2009 as a defendant in two separate criminal cases in Hillsborough County. In addition, Plaintiff has conferred with Mr. Montanez's attorney about this civil case, but Plaintiff states that Mr. Montanez's attorney is unable to accept process for his client.

Plaintiff now seeks an additional 90 days to serve Mr. Montanez.<sup>1</sup>

Having failed to show a sufficient reason why an additional 90 days is needed to complete service, it is ORDERED and ADJUDGED that:

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<sup>1</sup> Plaintiff asserts in its motion that it has served Defendant 5634 E. Hillsborough Avenue, Inc. (Doc. 58 ¶3.) If this is the case, Plaintiff should promptly comply with the Court's Order of August 25, 2009 (Doc. 56) and immediately file Proof of Service with the Court as to this Defendant.

- (1) Plaintiff's motion (Doc. 58) is **GRANTED** in part and **DENIED** in part.
- (2) Plaintiff has until October 5, 2009 to serve Defendant Donald Montanez and must file proof of service with the Court by October 11, 2009. Failure to file proof of service for Defendant Donald Montanez by October 5, 2009 will result in the Court without further notice dismissing Plaintiff's claims against the Defendant who was not served.

**DONE AND ORDERED** at Tampa, Florida, this 17th day of September, 2009.

  
SUSAN C. BUCKLEW  
United States District Judge

Copies to:  
Counsel of Record