

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

TIMOTHY R. BROWN,

Plaintiff,

v.

Case No. 8:09-cv-1504-T-24-EAJ

CHRISTOPHER D. ALLEN,

Defendant.

ORDER

This cause comes before the Court on Plaintiff's Motion for Extension of Time to Serve Defendant (Doc. 22). Plaintiff filed his Complaint (Doc. 2) in the 12th Judicial Circuit in and for Sarasota County, Florida on June 30, 2009. The case was removed to this Court on August 6, 2009 (Doc. 1) based on diversity jurisdiction because Defendant is a resident of Spain.

Defendant filed a Motion to Dismiss for Insufficient Service of Process and Lack of Jurisdiction (Doc. 13) on October 23, 2009, which this Court granted (Doc. 16). Plaintiff filed his Amended Complaint (Doc. 17) on November 16, 2009. The Court issued a Show Cause Order (Doc. 19) on February 3, 2010, directing Plaintiff to file proof of service against Defendant or to show cause why the case should not be dismissed for failure to serve.

In his Response (Doc. 20), Plaintiff stated: he served Defendant through the Secretary of State for the State of Florida, and the Secretary of State accepted that service on December 10, 2009. To comply with the provisions of the Hague Convention, Plaintiff's counsel retained a company specializing in international service of process to translate and serve the required documents upon Defendant in Spain. On February 2, 2010, Plaintiff's counsel received copies of the translated documents and confirmation that the documents were abroad for service. The

service of process company advised Plaintiff's counsel that perfecting service could take approximately six to eight months. Plaintiff requested an additional 180 days to comply with the Hague Convention and establish proper service on Defendant. In an Endorsed Order (Doc. 21) on February 5, 2010, this Court gave Plaintiff an additional 90 days to file proof of service and stated that no further extensions would be granted.

Now, Plaintiff has filed a Motion to Extend Time to Serve Defendant (Doc. 22) and asks the Court for an additional 90 days. At the outset, the Court notes its dismay as to Plaintiff's failure to initiate the procedure for obtaining international service of process within the first months of litigation. With the additional time that Plaintiff requests, this case will be pending for more than one year without proper service.

However, reconsidering the Court's previous order, taking into account that Federal Rule of Civil Procedure 4(m) explains the 120-day window for service does not apply to service in a foreign country, and acknowledging that the interests of justice require that this case be decided on the merits, the Court finds it necessary to grant Plaintiff's request.

Accordingly, it is ORDERED AND ADJUDGED that Plaintiff's Motion for Extension of Time (Doc. 22) is GRANTED. Plaintiff is directed to file proof of service on or before August 4, 2010. No further extensions will be given, and failure to file proof of service will result in the Court dismissing this case without further notice.

DONE AND ORDERED at Tampa, Florida, this 6th day of May, 2010.

Copies to:
Counsel of Record


SUSAN C. BUCKLEW
United States District Judge