

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**MARY GORDON,**

**Plaintiff,**

**v.**

**1:14-cv-1128-WSD**

**DEUTSCHE BANK NATIONAL  
TRUST COMPANY,**

**Defendant.**

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**OPINION AND ORDER**

This matter is before the Court on Magistrate Judge Justin S. Anand's Non-Final Report and Recommendation [8] ("R&R"), recommending that Defendant Deutsche Bank National Trust Company's ("Defendant") Motion to Dismiss for insufficient service of process and failure to state a claim be denied [2].

On February 25, 2014, Plaintiff Mary Gordon ("Plaintiff") filed against Defendant a wrongful foreclosure action in the Superior Court of DeKalb County, Georgia. On April 16, 2014, Defendant removed the action to this Court. On April 23, 2014, Defendant moved to dismiss the Complaint on the grounds that Plaintiff failed to properly serve Defendant with the Summons and Complaint, and failed to state a claim upon which relief can be granted. On October 29, 2014, the

Magistrate Judge issued an R&R, in which he extended the time for Plaintiff to serve Defendant until November 19, 2014. The Magistrate Judge ordered Plaintiff to file proof of service with the Court on or before November 26, 2014. In the event that Plaintiff failed to file proof of service, the Magistrate Judge ordered Plaintiff to show cause, on or before November 26, 2014, why this case should not be dismissed for insufficient service of process and want of prosecution. The Magistrate Judge noted that Plaintiff's attempt to serve the Complaint on Defendant's attorney was insufficient to comply with Rule 4 of the Federal Rules of Civil Procedure and Georgia law because Plaintiff failed to show that Defendant's attorney is an "officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process."

R&R at 10.

On November 18, 2014, Plaintiff submitted to the Court an "Affidavit of Diligence," ("affidavit") in which a process server states that he attempted to serve the Summons and Complaint on Defendant's attorney. According to the affidavit, Defendant's attorney did not accept the Summons and Complaint because she is not an agent authorized to receive service of process on behalf of Defendant. Plaintiff had knowledge of this fact because the Magistrate Judge's R&R repeatedly admonished her that serving Defendant's attorney is insufficient to

effect service of process on Defendant. R&R at 7; 10. Despite the Magistrate Judge's admonishment, Plaintiff again served the Summons and Complaint on Defendant's attorney.

The Court's local rules provide that a Court may dismiss for want of prosecution when a plaintiff "fail[s] or refuse[s] to obey a lawful order of the court in the case." LR 41.3(A)(2) N.D. Ga. Further, under Federal Rule of Civil Procedure 41(b), a district court may "dismiss an action *sua sponte* . . . for failure to obey a court order." Fed. R. Civ. P. 41(b); see also Equity Lifestyle Props., Inc. v. Fla. Mowing & Landscape Serv., Inc., 556 F.3d 1232, 1240–41 (11th Cir. 2009).


Plaintiff failed to comply with the Court's October 29, 2014, Order, after being granted an extension of time to properly serve Defendant. Plaintiff did not serve Defendant, on or before November 19, 2014, and Plaintiff did not file, on or before November 26, 2014, the required proof of service with the Court. Plaintiff also failed to show cause, on or before November 26, 2014, why this case should not be dismissed for insufficient service of process and want of prosecution. Plaintiff again served the Summons and Complaint on Defendant's attorney despite being warned that Defendant's attorney is not an agent authorized to receive service of process.

For the foregoing reasons,

**IT IS HEREBY ORDERED** that this action is **DISMISSED WITHOUT PREJUDICE** for failure to obey a lawful order of the Court.

**IT IS FURTHER ORDERED** that Magistrate Judge Justin S. Anand's Non-Final Report and Recommendation is **MODIFIED**, and Defendant's Motion to Dismiss the Complaint is **DENIED AS MOOT**.

**SO ORDERED** this 26th day of January, 2014.

  
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WILLIAM S. DUFFEY, JR.  
UNITED STATES DISTRICT JUDGE