

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

J & J SPORTS PRODUCTIONS, INC.,)	
Plaintiff,)	
)	
v.)	CAUSE NO.: 2:15-CV-353-RL-PRC
)	
MARCO PUENTE, individually and d/b/a)	
Estrella's Sports Bar, and RUMURS LLC,)	
an unknown business entity d/b/a)	
Estrella's Sports Bar,)	
Defendants.)	

OPINION AND ORDER

This matter is before the Court on a Motion for Appointment of U.S. Marshal Service to Serve Summons and Complaint [DE 28], filed by Plaintiff on September 21, 2016.

Plaintiff filed a Complaint on September 11, 2015. Plaintiff attempted service by the Lake County Sheriff's Office, which was returned indicating a bad address when attempted both by personal service and mail. An alternative address was located and Alias Summons were issued by the Court. Service was attempted via Certified Mail, Restricted Delivery, Return Receipt Requested and were returned undeliverable, indicating that the Defendant and registered agent Marco Puente had moved and left no forwarding address. Further research revealed an address in Phoenix, Arizona. Alias summons were issued and service was attempted at that address by Certified Mail, Restricted Delivery, Return Receipt Requested. The summons were returned unclaimed. Plaintiff now asks the Court to appoint the U.S. Marshal Service to personally attempt service of Summons and Complaint at the Phoenix, Arizona, address.

Federal Rule of Civil Procedure 4(c), regarding service of summons, provides:

(c) Service.

(1) In General. A summons must be served with a copy of the complaint. The

plaintiff is responsible for having the summons and complaint served within the time allowed by Rule 4(m) and must furnish the necessary copies to the person who makes service.

(2) By Whom. Any person who is at least 18 years old and not a party may serve a summons and complaint.

(3) By a Marshal or Someone Specially Appointed. At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. The court must so order if the plaintiff is authorized to proceed in forma pauperis under 28 U.S.C. § 1915 or as a seaman under 28 U.S.C. § 1916.

Fed. R. Civ. P. 4(c). Because Plaintiff is not proceeding in forma pauperis, the decision to order that service be made by the United States Marshal Service is discretionary with the court. *See id.*

Federal Rule of Civil Procedure 4(e) provides the methods for serving an individual within a judicial district of the United States:

(e) Serving an Individual Within a Judicial District of the United States. Unless federal law provides otherwise, an individual--other than a minor, an incompetent person, or a person whose waiver has been filed--may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) *delivering a copy of the summons and of the complaint to the individual personally;*

(B) *leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or*

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. 4(e) (emphasis added). For service on business entities, the Rule provides:

(h) Serving a Corporation, Partnership, or Association. Unless federal law provides otherwise or the defendant's waiver has been filed, a domestic or foreign corporation, or a partnership or other unincorporated association that is subject to suit under a common name, must be served:

(1) in a judicial district of the United States:

(A) *in the manner prescribed by Rule 4(e)(1) for serving an individual; or*

(B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and--if the agent is one authorized by statute and the statute so requires--by also mailing a copy of each to the defendant; or

(2) at a place not within any judicial district of the United States, in any manner prescribed by Rule 4(f) for serving an individual, except personal delivery under (f)(2)(C)(i).

Fed. R. Civ. P. 4(h) (emphasis added).

Indiana law allows for serving an individual by the following methods:

(A) In General. Service may be made upon an individual, or an individual acting in a representative capacity, by:

(1) sending a copy of the summons and complaint by registered or certified mail or other public means by which a written acknowledgment of receipt may be requested and obtained to his residence, place of business or employment with return receipt requested and returned showing receipt of the letter; or

(2) *delivering a copy of the summons and complaint to him personally; or*

(3) *leaving a copy of the summons and complaint at his dwelling house or usual place of abode; or*

(4) serving his agent as provided by rule, statute or valid agreement.

(B) Copy Service to Be Followed With Mail. *Whenever service is made under Clause (3) or (4) of subdivision (A), the person making the service also shall send by first class mail, a copy of the summons without the complaint to the last known address of the person being served, and this fact shall be shown upon the return.*

Ind. R. Trial P. 4.1 (emphasis added). As for service on a business entity, Indiana law provides:

(B) Manner of service. Service under subdivision (A) of this rule shall be made on the proper person *in the manner provided by these rules for service upon individuals*, but a person seeking service or his attorney shall not knowingly direct service to be made at the person's dwelling house or place of abode, unless such is an address furnished under the requirements of a statute or valid agreement, or unless an affidavit on or attached to the summons states that service in another manner is impractical.

Ind. R. Trial P. 4.6 (emphasis added).

Arizona law allows for service on individuals as follows:

(d) Service of Summons Upon Individuals. Service upon an individual from whom a waiver has not been obtained and filed, other than those specified in paragraphs (e), (f) and (g) of this Rule 4.1, *shall be effected by delivering a copy of the summons and of the pleading to that individual personally or by leaving copies thereof at that individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein* or by delivering a copy of the summons and of the pleading to an agent authorized by appointment or by law to receive service of process.

Arizona R. Civ. P. 4.1(d) (emphasis added). As for business entities:

(i) Service of Summons Upon Corporations, Partnerships or Other Unincorporated Associations. Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit in a common name, and from which a waiver has not been obtained and filed, shall be effected by delivering a copy of the summons and of the pleading to a partner, an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the party on whose behalf the agent accepted or received service.

Arizona R. Civ. P. 4.1(i).

Plaintiff has not attempted service of summons on Defendants at the new Arizona address by delivering a copy to Defendants personally or by leaving a copy with a person of suitable age and discretion who lives at Defendants' dwelling or usual place of abode as permitted under the federal and Arizona rules or by delivering a copy to Defendants personally or by leaving a copy at

Defendants' dwelling house or usual place of abode with a copy sent by first class mail as permitted under the Indiana rules.

Therefore, the Court **DENIES without prejudice** the Motion for Appointment of U.S. Marshal Service to Serve Summons and Complaint [DE 28].

SO ORDERED this 22nd day of September, 2016.

s/ Paul R. Cherry
MAGISTRATE JUDGE PAUL R. CHERRY
UNITED STATES DISTRICT COURT