

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANAMARK PHILLIPS AND
JULIANN PHILLIPS

CIVIL ACTION

V.

NO. 15-2019

QBE SPECIALTY INSURANCE
COMPANY, ET. AL

SECTION "F"

ORDER AND REASONS

Before the Court is Keith Fremin d/b/a K&A Services' Rule 12(b)(5) motion to dismiss for insufficiency of service of Process. For the following reasons, the motion is DENIED.

I.

Plaintiffs filed a second amended and supplemental complaint on June 15, 2016, naming Keith Fremin d/b/a K&A Services as a defendant. Plaintiffs originally served a summons for this defendant upon Michael Rodrigue as someone who was "designated by law to accept service of process on behalf of Keith Fremin d/b/a [K&A Services.]"¹ However, Keith Fremin d/b/a K&A Services is a sole proprietorship. To successfully accomplish service upon a sole proprietorship, such as the defendant here, plaintiffs must serve the sole proprietor personally or by domiciliary service.


¹ This statement is taken from defendant's, Keith Fremin d/b/a K&A Services, Rule 12(b)(5) motion to dismiss. In the original motion defendant stated that Michael Rodrigue accepted the summons on behalf of "Keith Freman, d/b/a Unlimited Services." However, the summons itself correctly states the entity name as "Keith Fremin d/b/a K&A Services."

FED. R. CIV. P. 4(e); La. Code Civ. P. arts. 1232, 1234. Because plaintiffs failed to properly serve a summons upon Keith Fremin personally or by domiciliary service, the defendant moved to dismiss for insufficiency of service of process.

After the defendant moved to dismiss, plaintiffs again served process on October 21, 2016. This service of process was successfully served upon Keith Fremin personally.

Accordingly, IT IS ORDERED that Keith Fremin d/b/a K&A Services' Rule 12(b)(5) motion to dismiss is hereby DENIED as moot.

New Orleans, Louisiana, November 1, 2016


MARTIN L. C. FELDMAN
UNITED STATES DISTRICT JUDGE