

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

DONISHA O. HARMASON

CIVIL ACTION

VERSUS

NO. 10-616-JJB-DLD

TRINITY INDUSTRIES OF PORT  
ALLEN, INC., ET AL

**RULING ON DEFENDANT’S RULE 12(B)(5) MOTION TO DISMISS**

This matter is before the Court on Defendant Trinity Marine Products, Inc.’s Rule 12(b)(5) Motion to Dismiss (doc. 4). Plaintiff has not filed a motion in opposition. This Court’s jurisdiction exists pursuant to 28 U.S.C. § 1331.

On October 7, 2009, Plaintiff Donisha O. Harmason (“Harmason”) filed suit against Defendant Trinity Marine Products, Inc. (“Trinity”) in Louisiana’s 18<sup>th</sup> Judicial District Court seeking damages for alleged sexual harassment under Title VII of the Civil Rights Act of 1964 (doc. 1). However, Plaintiff did not serve Defendant until September 1, 2010 (doc. 1, exhibit A). Trinity removed the case to this Court on September 15, 2010 (doc. 1).

On October 13, 2010, Trinity filed its Rule 12(b)(5) Motion to Dismiss (doc. 4). Trinity alleges that Plaintiff’s suit must be dismissed for insufficient service of process under Federal Rule of Civil Procedure 4(m) (doc. 4).

Under Federal Rule of Civil Procedure 4(m), “[i]f a defendant is not served within 120 days after the complaint is filed, the court--on motion or on its own

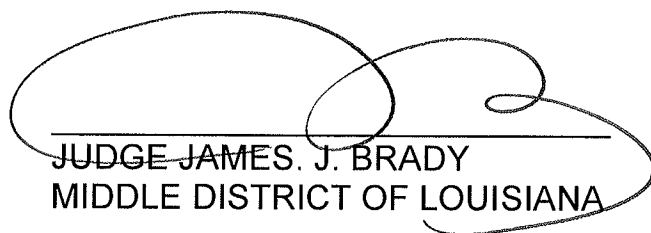
after notice to the plaintiff--must dismiss the action without prejudice against that defendant or order that service be made within a specified time.”

The Court finds that dismissal is appropriate under the circumstances. Harmason filed suit on October 7, 2009 and did not serve Trinity until September 1, 2010—nearly one year later and well after the 120-day period set out in Federal Rule of Civil Procedure 4(m). Moreover, Harmason failed to file an opposition to Trinity’s motion after being given notice thereof on October 14, 2010 (doc. 5). Therefore, the Court will GRANT Defendant’s Rule (12)(b)(5) Motion to Dismiss (doc. 4).

**CONCLUSION**

Accordingly, because Plaintiff failed to timely serve Defendant, the Court GRANTS Defendant Trinity Marine Products, Inc.’s Rule 12(b)(5) Motion to Dismiss (doc. 4).

Signed in Baton Rouge, Louisiana this 19<sup>th</sup> day of November 2010.

  
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JUDGE JAMES. J. BRADY  
MIDDLE DISTRICT OF LOUISIANA