

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA

FACTOR KING, LLC

CIVIL ACTION

VERSUS

BLOCK BUILDERS, LLC, ET AL.

NO.:14-00587-BAJ-RLB

RULING AND ORDER

On February 13, 2015, Defendant Block Builders, LLC (“Third-Party Plaintiff”) filed an Amended Answer (Docs. 22, 23) to Plaintiff Factor King LLC’s Complaint (Doc. 1). The Amended Answer included a third party demand against Dolese Bros. Co., Commercial Metals Company, C.A.S. Co., Inc., Garcia’s Concrete Contractors, Tech-Con Systems, James A. Teague Rental Equipment, United Rentals and BMP Construction, LLC (collectively “Third-Party Defendants”). Third-Party Plaintiff seeks recoupment from the Third-Party Defendants in the event it is found liable to the Plaintiff on the underlying claims. (See Doc. 23 at pp. 12-15).

Proper service of process is essential to pursue a suit in federal court. See Fed. R. Civ. P. 4(c)(1). However, an individual, corporation, or association that is subject to service may waive service of summons. Fed. R. Civ. P. 4(d)(1). In the absence of proper service of process, or waiver of service by the defendant, this Court is without jurisdiction over the defendant and cannot proceed. *Murphy Brothers, Inc., v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 350-51 (1999). Rule 4(m) of the Federal Rules of Civil Procedure Rule (“Rule”) provides:

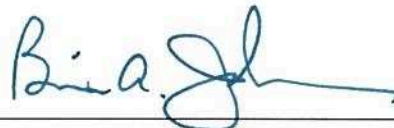
If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.¹

Here, there is no evidence in the record indicating that service of process was properly effectuated with respect to any of the Third-Party Defendants. Because more than 120 days have elapsed since the filing of this matter, Third-Party Plaintiff must explain this deficiency, or the third-party demand must be dismissed pursuant to Rule 4(m).

Accordingly,

IT IS ORDERED that Block Builders, LLC **SHOW CAUSE**, in writing, why its third-party demand should not be dismissed for failure to serve any of the Third-Party Defendants within the period outlined in Rule 4(m). Block Builders, LLC's response must be received by this Court within fourteen (14) days of this Order. Failure to respond will result in dismissal of Block Builders, LLC's third-party demand.

Baton Rouge, Louisiana, this 29th day of January, 2016.



**BRIAN A. JACKSON, CHIEF JUDGE
UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF LOUISIANA**

¹ After December 1, 2015, the revisions to the Federal Rules of Civil Procedure went into effect. Rule 4(m) now requires 90 days to serve a complaint. However, at the time the third-party demand was filed, the Rules required 120 days.