

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Northern Division)

JAMES REDDING

*

Plaintiff,

*

v.

*

CIVIL ACTION NO. 1:11-cv-00674-CCB

JUSTIA, INC., et al.

*

Defendants.

*

* * * * *

**MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
DUE TO INSUFFICIENT SERVICE OF PROCESS**

Defendant, Justia, Inc., by and through its undersigned counsel, pursuant to Fed. R. Civ. P. 12(b)(5), submits this Memorandum in Support of their Motion to Dismiss Plaintiff's Complaint Due to Insufficient Service of Process filed against it in this matter by Plaintiff James Redding ("Mr. Redding" or "Plaintiff").

INTRODUCTION

On March 14, 2011 Mr. Redding filed a four count Complaint against six Defendants, namely Justia, Inc., Elizabeth A. McClanahan (Judge of the Court of Appeals of Virginia), James W. Haley, Jr. (Judge of the Court of Appeals of Virginia), Jere M.H. Willis, Jr. (Senior Judge of the Court of Appeals of Virginia), Cynthia L. McCoy (Clerk of the Court of Appeals of Virginia), and Justin Shelton (Deputy Clerk of the Court of Appeals of Virginia).

Mr. Redding's Complaint arises from underlying workers' compensation claims that were denied before the Virginia Workers' Compensation Commission. Mr. Redding filed workers' compensation claims on April 5, 1996 for allegedly being exposed to bodily fluids that caused him to contract tuberculosis and Hepatitis B. The Deputy Commissioner denied Mr.

Redding's claims on October 29, 2009. Mr. Redding requested a Review which was conducted on the record. After reviewing the record, the three Commissioner panel affirmed the Deputy Commissioner's ruling that Mr. Redding had failed to prove by a preponderance of the evidence a compensable injury by accident, a compensable occupational disease, or an ordinary disease of life arising out of or in the course of employment.

Mr. Redding appealed the Review decision to the Court of Appeals of Virginia. In an unpublished Memorandum Opinion – Per Curiam, Judges McClanahan, Haley and Willis affirmed the Review decision on February 15, 2011.

Mr. Redding then filed the instant action on March 14, 2011 alleging fraud, slander, intentional infliction of emotional distress, and racial discrimination seeking damages, injunctive and other relief.

STATEMENT OF THE CASE

This Motion pertains solely to Defendant Justia, Inc (hereinafter "Justia"). Subsequent to Mr. Redding filing his Complaint on March 14, 2011, The Honorable Catherine C. Blake issued an Order dated June 10, 2011, directing the Court's Clerk to:

prepare and issue summons to plaintiff, who must then serve a copy of the summons and the complaint on defendant. Plaintiff may effectuate service by presenting summons to the Clerk for signature and seal and then serving a copy of the summons and complaint on defendants. Pursuant to Fed. R. Civ. P. 4(c)(2), this service may be effected by any person who is not a party and who is at least 18 years of age. Plaintiff is reminded that under Fed. R. Civ. P. 4(1), the person effecting service must promptly notify the court, through an affidavit, that he or she has served defendants.

By footnote, the Order further states, "If Plaintiff does not use a private process server, and instead use[s] certified mail, return receipt requested to make service, they must file with this Court the United States Post Office acknowledgement as proof of service. Service by mail must be made by 'restricted delivery.'" (See Exhibit A).

On July 20, 2011, Defendants Shelton and McCoy filed a Motion to Dismiss pursuant to Rule 12(b)(5). In Mr. Redding's opposition to the motion, he attached copies of post office certified mail receipts for packages he sent to Defendants Shelton and McCoy, as well as the receipts for packages sent to Justia, Justia's Resident Agent, and the parents of Justia's Chief Executive Officer. It was not until Justia's Counsel received Mr. Redding's Opposition, did Justia realize that Mr. Redding had attempt to effect service upon it.

In his attempts to serve Justia, Mr. Redding mailed three packages. (1) Mr. Redding sent by certified mail a copy of the summons, without a copy of the Complaint, to Timothy Stanley, Chief Executive Officer of Justia, at his business address in Mountain View, California. The service by mail was not made by restricted delivery. Mr. Stanley did not sign for the envelope. The package's signature card is illegibly signed by an unknown individual, not Mr. Stanley. (See Exhibit B). (2) Mr. Redding also sent by certified mail a copy of the summons, without a copy of the Complaint, to Justia's resident agent, Corporation Service Company, in Las Vegas, Nevada. Again, the service by mail was not made by restricted delivery. (3) Additionally, Mr. Redding attempted to serve Justia by sending by certified mail a copy of the summons, without a copy of the Complaint, to the address of Mr. Stanley's parents in Ann Arbor, Michigan. Again, the service by mail was not made by restricted delivery. Service was not effected by personal service or any other proper means. (See Affidavit attached as Exhibit C incorporated herein by reference; see also Exhibit B).

LEGAL STANDARD

Fed. R. Civ. P. 12(b)(5) provides for the filing of a motion to dismiss based on insufficiency of service of process. Braithwaite v. Johns Hopkins Hospital, 160 F.R.D. 75 (D. Md. 1995).

Conclusory statements that defendant was properly served are insufficient to overcome defendants' sworn affidavit that they were never served with process; when defendant makes a Fed. R. Civ. P. 12(b)(5) motion, it is plaintiff's burden of proof to establish its service of process was adequate. Cooper v. Conn. Pub. Defender's Office, 480 F. Supp. 2d 536, 537 n.1 (D. Conn. 2007). Fed. R. Civ. P. 4(h) provides for the proper service of corporations:

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.

Fed. R. Civ. P. 4(e)(1) provides:

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.

Maryland state law provides that service of a corporation is effected by serving the corporation's president, secretary, treasurer, or resident agent. MD. RULE 2-124(d). If there is no resident agent, or the plaintiff's good faith attempts to serve one of the authorized officers have failed, then the plaintiff may serve any "other person expressly or impliedly authorized to receive service of process." Id.

ARGUMENT

Mr. Redding's various mailings by certified mail copies of the summons without a copy of the Complaint are deficient for two reasons: (1) two of the three mailings are not in accordance with the Federal Rules in that service was not effected by restricted delivery, personal service or by any other proper means; and (2) none of the three summonses were accompanied by a copy of the Complaint.

(1) For Two of the Attempts at Service, Service Was Not Effected By Certified Mail, Return Receipt Requested - Restricted Delivery, Personal Service, Or By Any Other Proper Means.

Fed. R. Civ. P. 4(c) provides that service is to be effected on an individual by "any person who is at least 18 years old and not a party" to the case. Additionally, in her Order dated June 10, 2011, Judge Blake made it plainly clear to Mr. Redding the steps he needed to take pursuant to the Federal Rules of Procedure to properly serve the Defendants in the action he filed. Judge Blake's Order recited that proper service consisted of personal service by a person over the age of 18 who was not a party. It further stated that if a private process server was not used, but rather certified mail - return receipt requested, then service by mail must be by "restricted delivery."

As attested to by Mr. Stanley, Mr. Redding sent a copy of the summons to Justia's office in Mountain View, California without a copy of the Complaint and without using restricted

delivery. The package was addressed to Mr. Stanley. Though Mr. Stanley is authorized under the Federal Rules to receive service, he did not receive the package. Mr. Stanley did not sign for the package, nor was he requested to waive service. Additionally, Mr. Redding attempted to serve Justia by mailing a copy of the summons by certified mail—return receipt requested, without restricted delivery—to the parents of Justia’s CEO. The parents of Justia’s CEO are not resident agents or other authorized officers who are able to accept service. Justia’s resident agent is Corporation Services Company.

(2) The Summons Was Not Accompanied By A Copy Of The Complaint.

(a) Fed. R. Civ. P. 4(c)(1) mandates that “a summons must be served with a copy of the complaint.” Judge Blake’s Order made clear that the summons and Complaint needed to be served by appropriate methods. The failure of Mr. Redding to serve a copy of the Complaint with the summons on Justia is in violation of the Federal Rules of Civil Procedure. See Albra v Advan, Inc., 490 F.3d 826 (11th Cir. 2007) (Plaintiff’s service—mailing the summons to the Defendant without a copy of the complaint—was deemed a violation of the Federal Rules and the complaint was dismissed). Though courts lend liberal construction to the pleadings of *pro se* parties, the parties are still required to conform to procedural rules. Id. at 829. In each attempt at service, Mr. Redding failed to serve a copy of the Complaint with the summons. Accordingly, Mr. Redding’s attempts at service are deficient pursuant to the Federal Rules and Plaintiff’s Complaint against Justia should be dismissed pursuant to Rule 12(b)(5).

Furthermore, Fed. R. Civ. P. 4(l) provides: “Proving Service. (1) *Affidavit Required.* Unless service is waived, proof of service must be made to the court. Except for service by a United States marshal or deputy marshal, proof must be by the server's affidavit.” As provided by Judge Blake’s Order, the United States Post Office acknowledgement must be provided as

proof of service when utilizing certified mail. To date, Mr. Redding has not filed such an acknowledgement. Justia not having been personally served, Plaintiff cannot file a server's affidavit. For these reasons, Mr. Redding's attempt at service upon Justia is deficient pursuant to the Federal Rules and Plaintiff's Complaint should be dismissed.

CONCLUSION

Plaintiff has failed to adhere to the Federal Rules of Procedure and a Court Order. Plaintiff mailed Justia a copy of the summons by certified mail – return receipt requested, without restricted delivery. Thereby, Plaintiff failed to serve the Defendant either by personal service, restricted delivery, or any other proper means as required. In addition, Plaintiff failed to accompany the summons with a copy of the Complaint as required. Accordingly, Defendant, Justia, Inc., respectfully requests this Honorable Court to dismiss Plaintiff's Complaint against it due to insufficient service of process.

Respectfully submitted,

/s/

Robert M. Schwartzman (Fed. Bar No. 01092)

/s/

John J. Yannone (Fed. Bar No. 04396)
Resnick & Schwartzman, L.L.C.
One East Franklin Street, Suite 200
Baltimore, Maryland 21202
Telephone: 410-539-6087
Facsimile: 410-505-1552
rms@rs-atty.com
jy@rs-atty.com
Counsel for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of August, 2011, a copy of the foregoing Memorandum in Support of Motion to Dismiss Due to Insufficient Service of Process was served electronically via this Court's CM/ECF System, and first-class mail, to the following:

Mr. James Redding
P.O. Box 3411
Washington, D.C. 20010

/s/
John J. Yannone