

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

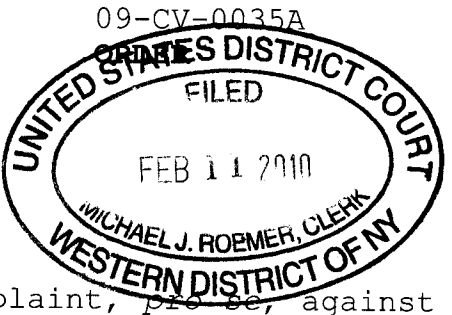
JOSEPH C. SUN,

Plaintiff,

-v-

OFFICER TJEPKEMA, et al.,

Defendants.



Plaintiff, Joseph Sun, filed a complaint, ~~pro se~~, against a number of United States Customs and Border Protection Officers and, upon granting him permission to proceed *in forma pauperis*, the Court directed the Clerk of the Court to cause the United States Marshals Service to serve the summons and complaint on each of the named defendants. See Fed.R.Civ.P. 4(c)(3). Pursuant to Fed.R.Civ.P. 4(i)(3), in addition to being directed to serve each of the defendants, the Clerk of the Court was also directed to forward a copy of the summons and complaint by certified mail to the Attorney General of the United States and the civil process clerk at the United States Attorney's Office for the Western District of New York. (Docket Nos. 4 and 5).

Each of the United States Marshals Service Process Receipt and Return Forms ("Marshal Forms") used to serve the defendants have been returned to the Court and docketed by the Clerk's Office as "executed." (Docket Nos. 7-13). Each Marshal Form also attaches a United States Post Office Return Receipt Form (PS Form 3811)

signed by someone presumably at the address at which the Marshal Forms and summonses and complaints were forwarded to: 726 Exchange Street, Suite 400, Buffalo, New York 14210. Additionally, separate Marshal Forms for each of the defendants were also received and docketed as "unexecuted" on the same date as the ones docketed as executed, with a notation by the Marshals Service: "Return not served-no ackn[owledgment] rec[eived] [at] [United States Marshals Office]. (Docket No. 6). To date, no acknowledgments of service¹ nor answers or other responsive pleadings have been filed by any of the defendants. Accordingly,

IT IS HEREBY ORDERED that the time in which plaintiff has to serve the summons and complaint is extended an additional 90 days, see Fed.R.Civ.P. 4(m); see also *Rivera v. Pataki*, No. 04 Civ. 1286 (MBM), 2005 WL 407710, at *15 (S.D.N.Y., Feb. 7, 2005) (numerous courts have found that "as long as the inmate provides the information necessary to identify the defendant, the Marshal's failure to effect service ... constitutes good cause to extend the time for service under" Fed.R.Civ.P. 4(m)) (citations omitted)).

¹Pursuant to Fed.R.Civ.P. 4(i)(3), an officer or employee of the United States sued in their individual capacity must be served pursuant to the provisions of Rule 4(e), (f), or (g). In addition to service on the officer or employee, the United States must also be served, pursuant to Rule 4(i)(1). This may be done by forwarding copies of the summons and complaint to the Attorney General of the United States and civil process clerk of the United States Attorney's Office by registered or certified mail.

Rule 4(e) provides that an individual may be served by following state law in the state where the district court is located. In this District, the Marshals Service typically, unless ordered otherwise, serves a summons and complaint pursuant N.Y.C.P.L.R. 312-a (Service by Mail), which provides that service is not "complete" until the signed acknowledgment of service or receipt is mailed or delivered to the sender.

FURTHER, that the Clerk of the Court is directed to cause the United States Marshals Service to again serve the summons and complaint on each of the named defendants at the following address: U.S. Customs and Border Protection, 726 Exchange Street, Suite 400, Buffalo, New York 14210. The Clerk's Office is also directed to complete the necessary summonses and Marshal Forms for service.

FURTHER, the Clerk of the Court is also directed to forward copies of the summons and complaint, together with this Order, by registered or certified mail to the following, pursuant to Rule 4(i) of the Federal Rules of Civil Procedure:

- Attorney General of the United States, Main Justice Building, 10th and Constitution Avenues N.W., Washington, DC 20530;

- Civil Process Clerk, United States Attorney for the Western District of New York, United States Attorney's Office, USAO/WDNY, 138 Delaware Avenue, Buffalo, New York 14202.

SO ORDERED.

S/ MICHAEL A. TELESKA
MICHAEL A. TELESKA
United States District Judge

Dated: February 10, 2010
Rochester, New York