

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WESTERN DIVISION

No. 5:12-CV-597-FL

MICHAEL WILLIAM DEVOTIE, )  
 )  
 Plaintiff, )  
 )  
 v. )  
 )  
 ALLIED BARTON SECURITY )  
 SERVICES, LLC, )  
 )  
 Defendant. )  
 )

ORDER

This employment discrimination action, initiated by plaintiff proceeding *pro se*, by complaint filed September 12, 2012, comes before the court on defendant’s motion to dismiss (DE # 5), plaintiff’s motion for extension of time to amend complaint (DE # 12), and plaintiff’s motion for extension of time to serve process (DE # 19).

BACKGROUND

Service of summons and complaint was due to be made on or before January 10, 2013, but that deadline passed without plaintiff serving summons or complaint upon defendant in accordance with Rule 4 of the Federal Rules of Civil Procedure.

By January 22, 2013, defendant became aware of the action pending against it, and filed a motion to dismiss by special appearance, arguing that the complaint should be dismissed pursuant to Rule 4(m). Plaintiff, whose attorney filed notice of appearance February 11, 2013, submitted through his counsel response in opposition March 12, 2013, after obtaining a consented-to time extension.

Motion for extension of time also was filed February 11, 2013, to amend complaint, which request remains pending, as does the separate motion for extension of time to serve process, filed March 12, 2013. In his response to the motion to dismiss, plaintiff asserts that the balance of equities weighs in favor of granting plaintiff an extension of time for service.

Plaintiff's attorney's affidavit has been presented on the record in support of these motions, wherein the attorney makes reference to plaintiff's initial *pro se* status, and certain communications concerning the status of service, upon which the attorney relied. Mention is made also of efforts by counsel to provide formal notice to defendant including through request for waiver of service January 16, 2013, which request was met with the instant motion to dismiss.

Subsequent service efforts are testified to by the attorney, who affirms that service of summons and complaint finally was made upon defendant's authorized representative February 8, 2013, and a declaration of service thereafter filed. That affidavit shows on the docket at entry number 17, together with exhibits evidencing service of process.

#### COURT'S DISCUSSION

For good cause shown, in its discretion, the court GRANTS plaintiff's motion for extension of time to serve process. Rule 4 of the Federal Rules of Civil Procedure commands consideration of whether good cause has been shown for failure timely to make service, and where such cause, as here, is found, that "the court must extend the time for service for an appropriate period." Plaintiff's efforts to promote through counsel service inform the court's determination, where service was testified to as accomplished February 8, 2013. While the response time has not yet expired, the court is informed by defendant's motion to dismiss and the arguments made in support of same, of defendant's position, where defendant's arguments in opposition necessarily adhere also to plaintiff's

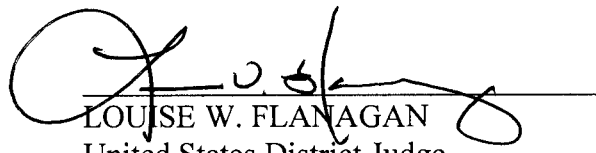
motion for extension of time to serve process. In light of its decision, having considered the arguments on both sides, the court therefore DENIES defendant's motion to dismiss.

As to plaintiff's remaining motion to amend, under the circumstances presented, where leave to amend should be freely allowed, said motion is GRANTED. Plaintiff shall have up to and until March 22, 2013, within which to file and serve his amended complaint. In its discretion, and of its own initiative, the court ALLOWS defendant under Rule 15, 21 days after service of the amended complaint within which to make its response.

#### CONCLUSION

For reasons given, the court GRANTS plaintiff's motion for extension of time to serve process, allowing an additional thirty (30) days, as requested. The court therefore DENIES defendant's motion to dismiss. Plaintiff's motion for extension of time to amend his complaint is GRANTED. Plaintiff shall have up to and until March 22, 2013, within which to file and serve his amended complaint. The court of its own initiative extends the response time, ALLOWING defendant 21 days after service of the amended complaint within which to make its response.

SO ORDERED this the 13th day of March, 2013.

  
LOUISE W. FLANAGAN  
United States District Judge