

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

RODRICK J. MORRIS,

Plaintiff,

v.

CONN CREDIT CO., *et al.*,

Defendants.

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Civil Action No. H-13-195

ORDER

Pending before the Court are Defendant Conn Credit Co.’s Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(4), (5), & (6) (Document No. 5) and Defendant AT&T Services, Inc.’s Rule 12(b)(5) Motion to Dismiss (Document No. 28), which both request dismissal of Plaintiff’s claims based on insufficient service of process. Having considered the motions and applicable law, the Court finds that the motions should granted.

Federal Rule of Civil Procedure 4(b) and (c) require that a summons must be issued for each defendant and served with a copy of the complaint. FED. R. CIV. P. 4(b)–(c). “When service of process is challenged, the serving party bears the burden of proving . . . good cause for failure to effect timely service.” *Thrasher v. City of Amarillo*, 709 F.3d 509, 511 (5th Cir. 2013) (quoting *Sys. Signs Supplies v. U.S. Dep’t of Justice, Wash., D.C.*, 903 F.2d 1011, 1013 (5th Cir. 1990)). Further, Rule

4(m) states that “[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.” FED. R. CIV. P. 4(m).

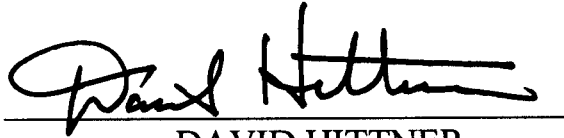
Plaintiff Rodrick J. Morris filed his original complaint on January 25, 2013. Defendants Conn Credit Co. and AT&T Services, Inc. both contend that although they received service of the complaint, they were never served with a summons as required by the federal rules. The 120-day time period for properly serving defendants under Rule 4(m) has passed. Defendants Conn Credit, Co. and AT&T Services, Inc. have properly moved to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(5). Plaintiff has failed to provide proof of service to the Court, nor has he requested additional time to effectuate proper service on these Defendants. In fact, Plaintiff has not responded to the pending motions to dismiss. Pursuant to Local Rule 7.4, failure to respond is taken as a representation of no opposition. S.D. TEX. LOCAL R. 7.4. It is Morris’s burden to show that service was proper. Morris has failed to meet this burden. Accordingly, the Court

ORDERS that the Defendant Conn Credit Co.’s Motion to Dismiss Pursuant to Federal Rules of Civil Procedure 12(b)(4), (5), & (6) (Document No. 5) is **GRANTED**. The Court further

ORDERS that Defendant AT&T Services, Inc.'s Rule 12(b)(5) Motion to Dismiss (Document No. 28) is **GRANTED**. The Court further

ORDERS that Plaintiff Rodrick J. Morris's claims against Conn Credit Co. and AT&T Services, Inc. are hereby **DISMISSED WITHOUT PREJUDICE** based on Plaintiff's failure to properly effectuate service within the 120-day time period required by Federal Rule of Civil Procedure 4(m).

SIGNED at Houston, Texas, on this 25 day of July, 2013.

A handwritten signature in black ink, appearing to read "David Hittner", is written over a horizontal line.

DAVID HITTNER
United States District Judge