

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

JON R. DEUTSCH,

Plaintiff,

v.

SILVER SHAMROCK REAL ESTATE, LLC,

Defendant.

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1:16-CV-310-RP

ORDER

Before the court in the above-entitled matter is Defendant’s Motion to Dismiss. (Dkt. 4). Having reviewed the motion and responsive filings thereto, applicable law, and the entire case file, the Court concludes that Defendant’s motion should be and is hereby **GRANTED**.

I. Background and Overview

Plaintiff Jon R. Deutsch (“Plaintiff”) filed suit against Defendant Silver Shamrock Real Estate, LLC (“Defendant”) on March 10, 2016. (Compl., Dkt. 1). Plaintiff alleges Defendant violated Title III of the Americans with Disabilities Act, 42 U.S.C. § 12181, *et seq.*, as well as Texas law. (*Id.* at 1–2). On October 28, 2016, Defendant filed the instant Motion to Dismiss. (Dkt. 4). Defendant argues that this action should be dismissed because (1) Plaintiff’s service of process upon Defendant was insufficient; (2) the Court lacks subject matter jurisdiction over Plaintiff’s claims; and (3) the Complaint fails to state a claim upon which relief can be granted. (*Id.* at 1).

II. Discussion

Federal Rule of Civil Procedure 4(m) provides that “[i]f a defendant is not served within 90 days after the complaint is filed, the court . . . must dismiss the action without prejudice against that

defendant or order that service be made within a specified time.”¹ Fed. R. Civ. P. 4(m). However, “if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” *Id.*

Plaintiff’s Complaint was filed on March 10, 2016, (Dkt. 1), and the summons was issued by the Clerk of Court on March 14, 2016, (Dkt. 3). However, the summons was not served upon Defendant until October 7, 2016, well past the period prescribed by Rule 4(m). (Dkt. 9-1 at 3).

Plaintiff seeks to avoid dismissal on this ground by noting that the Court must grant a plaintiff an extension of time if there is “good cause for delay.” (Resp., Dkt. 9, at 20). While Plaintiff is correct in that regard, he has failed to demonstrate that such good cause exists in the instant case. Indeed, the evidence produced shows that the process server did not even receive the summons until October 3, 2016. (Dkt. 9-1 at 3).

III. Conclusion

For the reasons detailed above, the Court finds that Plaintiff’s service of process upon Defendant was insufficient as a matter of law. Therefore, and pursuant to Federal Rule of Civil Procedure 4(m), the Court hereby **GRANTS** Defendant’s Motion to Dismiss. (Dkt. 4). Plaintiff Jon R. Deutsch’s claims against Defendant Silver Shamrock Real Estate, LLC are hereby **DISMISSED WITHOUT PREJUDICE**. This case is hereby **CLOSED**.

SIGNED on July 14, 2017.



ROBERT PITMAN
UNITED STATES DISTRICT JUDGE

¹ Both parties describe Rule 4(m) as imposing a 120-day deadline for service of process. However, updates to the Federal Rules that took effect in December 2015—three months before the Complaint in this matter was filed—reduced the applicable time period to 90 days.