

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

BURTON W. WIAND, as Receiver for
OASIS INTERNATIONAL GROUP, LTD.;
OASIS MANAGEMENT, LLC; AND
SATELLITE HOLDINGS COMPANY,

Plaintiff,

v.

Case No: 8:20-cv-00862-VMC-TGW

CHRIS AND SHELLEY ARDUINI, et al.,

Defendants.

**PLAINTIFF’S SECOND MOTION TO EXTEND TIME TO EFFECT SERVICE OF
COMPLAINT**

Plaintiff, BURTON W. WIAND, as Receiver for OASIS INTERNATIONAL GROUP, LTD., OASIS MANAGEMENT, LLC, and SATELLITE HOLDINGS COMPANY (“*Plaintiff*”), by and through undersigned counsel and pursuant to Fed.R.Civ.P. 4(m), moves this Court for entry of an order extending the time for service of the Complaint on Defendants Todd Berry, Kayla Crowley, Divergent Investments, LLC, Jason Gladman, Anne Hennessey, Mary McClare, and David Wilkerson (collectively “*Unserved Defendants*”), for a period of forty-five (45) days, through and including October 12, 2020. In support of this Motion, Plaintiff states as follows:

Executive Summary

Plaintiff’s lawsuit names ninety-four (94) defendants residing in multiple states throughout the country. To date, Plaintiff employed three different process servers and successfully served eighty-seven (87) of the ninety-four (94) defendants. Despite Plaintiff’s best efforts and due diligence, he has been unable to locate and/or properly serve the remaining seven (7) defendants because of reasonable reliance on information on defendants’ whereabouts that has proven to be

faulty and outdated. Plaintiff requests an additional forty-five (45) days to employ more investigative measures to locate and properly serve the remaining unserved defendants—whose claims collectively amount to more than \$100,000.00.

Factual Background

1. Plaintiff filed the Complaint (Doc. 1) on April 14, 2020, which named ninety-four (94) defendants.

2. Soon after initiating this action, on May 4, 2020, Plaintiff notified the Unserved Defendants of this action and requested that they waive service of a summons pursuant to Fed.R.Civ.P. 4(d).

3. Plaintiff has been unable to obtain waivers from the Unserved Defendants.

4. On July 10, 2020, Plaintiff filed his first Motion to Extend Time to Effect Service of Complaint (Doc. 193) on thirty-three (33) of the ninety-four (94) defendants.

5. On July 10, 2020, the Court entered an Order (Doc 194) granting Plaintiff an additional forty-five 45 days to effect service.

6. In those 45 days, Plaintiff was able to serve all but the remaining seven (7) Unserved Defendants.

7. Plaintiff retained three different process servers and investigators to effect service on the Unserved Defendants. Plaintiff's detailed and diligent attempts to serve the Unserved Defendants are summarized as follows:

a. **Todd Berry** - Through multiple background searches and skip trace searches, Plaintiff found two possible addresses for Mr. Berry. However, the occupant of the first residence claimed that Toddy Berry did not live there and did not know who he was. The second address was an abandoned building. During the requested extension, Plaintiff will employ new investigative efforts to locate Mr. Berry.

b. **Kayla Crowley** – Ms. Crowley’s driver’s license lists a PO Box as her address. Through background searches, Plaintiff learned that Ms. Crowley may live with her parents. On July 30, 2020, Plaintiff originally served Ms. Crowley via substitute service on her parents. On August 19, 2020, Ms. Crowley filed a Motion to Quash service arguing that she does not live at her parent’s residence (Doc. 381). In her motion, Ms. Crowley provided an address that she requested Plaintiff use for service but also stated that she travels frequently. However, the address provided was one of the first addresses attempted by Plaintiff’s process servers dozens of times and, to date, no one has gone into or left the property. During the requested extension, Plaintiff will complete service at the correct address and attempt to coordinate the same with Ms. Crowley and her travel schedule.

c. **Divergent Investments, LLC** - Divergent Investments, LLC is no longer operating. Its registered agent and managing member, Ronald Lawrence Jr., filed documents with the state of Maryland stating his address. Plaintiff attempted to serve the designated address, but the property appeared to be abandoned. Multiple background searches and skip trace searches also uncovered three additional addresses for Mr. Lawrence Jr. However, the occupants of two of the three locations claimed not to know Ronald Lawrence Jr. or Divergent Investments, LLC. On August 23, 2020, Plaintiff’s process server notified Plaintiff’s counsel that it appeared Divergent Investments, LLC was evading service at the third location by refusing to answer the door.

Additionally, through correspondence with Brent Winters—the Illinois-licensed attorney who may or may not be assisting multiple defendants in this action—Plaintiff discovered that Mr. Lawrence Jr. is one of Mr. Winter’s “clients” and likely has actual knowledge that this lawsuit is pending against it.

d. **Jason Gladman** – Background searches and skip trace searches revealed multiple addresses for Mr. Gladman. However, it appears Mr. Gladman has moved out of each of the discovered addresses. Plaintiff's process server learned from Mr. Gladman's previous landlord that Mr. Gladman did live at this address but has since moved out and may be living with his parents. On August 21, 2020, Plaintiff's process server located a new address possible address for Mr. Gladman and is attempting service. During the requested extension, Plaintiff will attempt to serve Mr. Gladman at the newly discovered address and continue investigative efforts to locate him.

e. **Anne Hennessey** – Plaintiff recently learned through background searches that Anne Hennessey is an alias for Danielle Montie Terranova and that she received the false profits at issue in this case under a false name. Plaintiff's background searches and skip trace searches identified a possible address, but the house at this location was abandoned. A neighbor informed Plaintiff's process server that Ms. Terranova went to live with her mother in New Jersey. Plaintiff located a possible address for Ms. Terranova's mother. The process server states that the house is being occupied but they have not yet been able to serve or speak to any resident. Plaintiff's process server continues to attempt service every day.

f. **Mary McClare:** After serving Ms. McClare's correct address, Plaintiff learned that Ms. McClare passed away. To date, no probate proceeding has been initiated. Plaintiff's counsel consistently communicates with Ms. McClare's estate attorney and is attempting to coordinate service with counsel or the estate. During the requested extension, Plaintiff will coordinate service with Ms. McClare's estate attorney or serve the estate's personal representative.

g. **David Wilkerson:** Plaintiff attempted to serve Mr. Wilkerson at the address where he renewed his vehicles. This was a gated community and the guard would not let the process

server enter on the first few attempts. Finally, the process server was able to see the residence and learned that it was vacant. There was no furniture or vehicles at the property. During the requested extension, Plaintiff will employ new investigative efforts to locate Mr. Wilkerson's new address.

8. Ultimately, Plaintiff and his team of process servers and investigators continue to work diligently to locate and properly serve the Unserved Defendants. As noted above, during the previous 45-day extension, Plaintiff successfully served twenty-six (26) defendants.

9. Plaintiff is required to serve the Unserved Defendants no later than August 27, 2020. Therefore, Plaintiff requests an additional forty-five (45) days to effect service on the Unserved Defendants.

Memorandum of Law

Rule 4(m) of the Federal Rules of Civil Procedure provides that Plaintiff must effect service on the Unserved Defendants within ninety (90) days after the filing the complaint or the Court must dismiss the action without prejudice. However, Rule 4(m) also provides that if the plaintiff shows good cause for failure to effect service, the court must extend the time for an appropriate period. "Good cause requires the party seeking enlargement to show good faith and a reasonable basis for noncompliance with the [90] day service requirement." *Gambino v. Village of Oakbrook*, 164 F.R.D. 271, 274 (M.D. Fla. 1995). Courts will look to factors outside a plaintiff's control, "such as sudden illness, natural catastrophe, or evasion of service of process," to determine whether the plaintiff has shown "good cause." *Id.* (quoting *Estate of Zachery v. Questcare, Inc.*, 895 F. Supp. 1472 (M.D. Ala. 1995)); *see also Nelson v. Barden*, 145 F. App'x 303, 309 (11th Cir. 2005) ("Good cause" exists "only when some outside factor[,], such as reliance on faulty advice, rather than inadvertence or negligence, prevented service." (alteration in original) (quoting *Prisco v. Frank*, 929 F.2d 603, 604 (11th Cir. 1991))).

Here, Plaintiff has in good faith attempted to serve the Unserved Defendants as outlined in Paragraph 7(a)-(g) above. However, Plaintiff has been unable to effect service based on the faulty addresses uncovered through background searches and skip trace searches for Unserved Defendants, Todd Berry, Divergent Investments, LLC, Jason Gladman, and David Wilkerson. Additionally, Plaintiff relied on the incorrect name Unserved Defendant, Anne Hennessey, provided when she obtained her false profits. Through diligent attempts to locate Anne Hennessey, Plaintiff recently discovered that her real name is Danielle Montie Terranova. Finally, Plaintiff discovered that Unserved Defendant, Mary McClare, passed away, but no probate proceeding has been initiated yet. To date, Plaintiff has been unable to identify Ms. McClare's personal representative for service on her estate. Plaintiff's failure to effectuate service on the Unserved Defendants is not due to Plaintiff's inadvertence or negligence. *See Nelson*, 145 F. Appx at 309. Good cause should be evident because in the last forty-five (45) days, Plaintiff successfully served twenty-seven (27) defendants and only the seven (7) Unserved Defendants remain.

Moreover, "[e]ven in the absence of good cause, a district court has the discretion to extend the time for service of process." *Lepone-Dempsey v. Carroll Cty. Comm'rs*, 476 F.3d 1277, 1281 (11th Cir. 2007) (citing *Horenkamp v. Van Winkle & Co.*, 402 F.3d 1129, 1132 (11th Cir. 2005)). For example, the district court may grant an extension where "the applicable statute of limitations would bar the refiled action, or if the defendant is evading service or conceals a defect in attempted service." *Horenkamp*, 402 F.3d at 1132-33 (quoting Fed. R. Civ. P. 4(m), Advisory Committee Note, 1993 Amendments)). In *Horenkamp*, the Eleventh Circuit affirmed the district court's denial of a single defendant's motion to dismiss a complaint for the plaintiff's failure to timely perfect service of process where the district court exercised its discretion and excused the plaintiff's untimeliness despite the plaintiff's inability to show "good cause." 402 F.3d at 1132.

Here, even if the Court determines that Plaintiff has failed to show good cause, the Court should use its discretion to extend the time for service because the Unserved Defendants will not be prejudiced by the extension of time and Plaintiff expended a lot of time serving a large number of Defendants in this action. Moreover, as noted above, Divergent Investments, LLC's managing member has actual notice of this lawsuit as he has reached out to Brent Winters to "represent" him in this action. Additionally, it appears that Unserved Defendants Anne Hennessey a/k/a Danielle Montie Terranova and Divergent Investments, LLC are evading service. Given that false profits obtained by the Unserved Defendants are collectively more than \$100,000.00 the Court should use its discretion to extend service.

WHEREFORE, Plaintiff respectfully request this Honorable Court grant Plaintiff's Motion of to Extend Time to Effect Service on Defendants, Toddy Berry, Kayla Crowley, Divergent Investments, LLC, Jason Gladman, Anne Hennessey a/k/a Danielle Montie Terranova, Mary McClare, and David Wilkerson, for a period of forty-five (45) days, through and including Monday, October 12, 2020.

Respectfully submitted,

ENGLANDER FISCHER

/s/ Alicia Gangi

JOHN W. WAECHTER

Florida Bar No. 47151

Primary: jwaechter@eflegal.com

Secondary: dturner@eflegal.com

COURTNEY L. FERNALD

Florida Bar No. 52669

Florida Bar Certified, Appellate Practice

Primary: cfernald@eflegal.com

Secondary: tdillon@eflegal.com

BEATRIZ MCCONNELL

Florida Bar No. 42119

Primary: bmccconnell@eflegal.com

Secondary: tdillon@eflegal.com

ALICIA GANGI
Florida Bar No. 1002753
Primary: agangi@eflegal.com
Secondary: tdillon@eflegal.com
ENGLANDER and FISCHER LLP
721 First Avenue North
St. Petersburg, Florida 33731-1954
(727) 898-7210 / Fax (727) 898-7218
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system and will send copies by U.S mail and email as indicated to the following:

Chris Arduini
169 Allen Height Road St
Johnsville, NY 13452
PRO SE
Via Email: carduini@frontiernet.net

Shelley Arduini
169 Allen Height Road St
Johnsville, NY 13452
PRO SE
Via Email: carduini@frontiernet.net

Offer Attia
217 Forest Ave
New Rochelle, NY 10804
PRO SE
Via Email: Michal@attiaenterprises.net

Ann Barton
c/o The Country Postman
2517 RT44 #11
New York, US 12578
PRO SE

Black Dragon Capital, LLC c/o Michael Obay
450 Leverett Avenue
Staten Island, NY 10308
PRO SE
Via Email: obaymichael@yahoo.com

Patrick Flander
1096 Youkers Bush Road
Saint Johnsville, NY 13452
PRO SE
Via Email: topnotchdj@hotmail.com

Betsy Doolin
6662 La Mirada Drive East, Unit 2
Jacksonville, FL 32217
PRO SE
Via Email: bjd6257@icloud.com

Anna Fuksman
862 Fassett Road
Elmira, NY 14905
PRO SE
Via Email: hfuksman@yahoo.com

Henry Fuksman
862 Fassett Road
Elmira, NY 14905

Chad Hicks
3210 Vermont Road
Carterville, IL 62918

PRO SE

Via Email: hfuksman@yahoo.com

Elmore Runee Harris

5 Whitney Drive

Greenwich, CT 06831

PRO SE

Via US Mail and Email:

runeeh@verizon.net

Richard Hubbard

412 Woodbury Drive

Wyckoff, NJ 07481

PRO SE

Via Email: wineandguns@yahoo.com

Timothy Hunte

2155 Rainlily Drive

Center Valley, PA 18034

PRO SE

Via Email: timhunte@yahoo.com

Kevin Kerrigan

14 Fieldstone Road

Putnam Valley, NY 10579

PRO SE

Via Email: irishkevin55@gmail.com

Life's Elements, Inc. c/o Kevin Johnson

810 Long Island Avenue

Medford, NY 11763

PRO SE

Via Email: energybizzny@gmail.com

Vince Petralis, Jr.

5162 W Ridge Blvd

Spencerport, NY 14559

PRO SE

Via Email: vincepetralis@gmail.com

Frank Nagel

10 Kyle Park

Carmel, NY 10512

PRO SE

Via Email: cahicks09@yahoo.com

Courtney Hubbard

412 Woodbury Drive

Wyckoff, NJ 07481

PRO SE

Via Email: wineandguns@yahoo.com

Alan Johnston

2020 Holly Leaf Drive

Tyler, TX 75703

PRO SE

Via Email: coachbigal@yahoo.com

Kerrigan Management, Inc.

c/o Kevin Kerrigan

14 Fieldstone Road

Putnam Valley, NY 10579

PRO SE

Via Email:

kerriganmanagementinc@gmail.com

David Paul Lipinczyk

6336 Redman Road

Brockport, NY 14420

PRO SE

Via Email: dlipinczyk@aol.com

Vince Petralis (Sr.)

6 Adeane Drive

West Rochester, NY 14624

PRO SE

Via Email: spetralis2001@yahoo.com

Frederick Stewart Schriels

GrayRobinson, PA

401 E Jackson St Ste 2700

Tampa, FL 33601-3324

813/273-5000 Fax: 813/273-5145

Attorney for Joseph Martini, Jr. and Joseph Martini (Sr.)

Email: frederick.schriels@grayrobinson.com

Christopher J. Whitelock

Whitelock & Associates, PA

PRO SE

Via Email: francisnagel@aol.com;
francisnkaren@aol.com

Carlos E. Sardi
Sardi Law PLLC
225 Alcazar Ave.
Coral Gables, FL 33134
05-697-8690 Fax: 305-697-8691
Attorney for Tami Lacy
Email: carlos@sardilaw.com

300 SE 13th St Ft Lauderdale, FL 33316
954/463-2001 Fax: 954/463-0410

Attorney for Bradley Kantor and Carrie Kantor

Email: cjw@whitelocklegal.com

William Keith Fendrick
Holland & Knight, LLP - Tampa
100 N Tampa St, Ste 4100
Tampa, FL 33602

813/227-8500 Fax: 813/229-0134

Attorney for Elizabeth McMahon

Email: keith.fendrick@hklaw.com

Dated: August 26, 2020.

/s/ Alicia Gangi
Attorney for Plaintiff