

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION

BURTON W. WIAND,  
Receiver, *etc.*,

Plaintiff,

v.

CASE NO. 8:20-cv-862-VMC-TGW

CHRIS AND SHELLEY ARDUINI,  
*et al.*,

Defendants.

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**REPORT AND RECOMMENDATION**

The Receiver has filed an Omnibus Motion to Tax Costs Against Defaulted Defendants and a Second Omnibus Motion to Tax Costs Against Defaulted Defendants (Docs. 649, 678). The Receiver seeks reimbursement of service of process costs he incurred because those defendants did not execute waivers for service of summonses. The motions were referred to me.

The Receiver has shown that he is entitled to reimbursement of those service of process expenses under Rule 4(d)(2), F.R.Civ.P. I therefore recommend that the motions be granted to the extent that the judgments against these defendants be amended to include those service of process expenses.

I.

On April 14, 2020, the Receiver filed this lawsuit alleging that the defendants received false profits paid to them in furtherance of a Ponzi scheme (Doc. 1). The Receiver, prior to attempting service of process on the defendants listed herein, “mailed notices of the lawsuit, copies of the Complaint, and waivers of service of summons” (Docs. 649-1, 678-1; ¶5). However, those defendants “failed to sign and return the waivers, which resulted in service of process expenses” (*id.*). Service of process for several of these defendants was time consuming and costly (*see* Docs. 649, 678).

None of these defendants responded to the lawsuit. Consequently, the court, upon the Receiver’s motions, entered default judgments against them (Docs. 598, 601–09, 611–12, 614–16, 618–31, 666–72).

On November 11, 2020, the Receiver filed an Omnibus Motion to Tax Costs against 29 defaulted defendants (Doc. 649). On December 10, 2020, the Receiver filed a Second Omnibus Motion to Tax Costs against an additional seven defaulted defendants (Doc. 678). Both motions were accompanied by affidavits from the Receiver’s counsel attesting to the costs, all of which were service of process fees except for one related mail expense.

These motions were referred to me (Docs. 651, 679). None of the defendants opposed, or otherwise responded to the motions.

The costs for service of process range from \$113.85 to \$1,256.25 (Docs. 649-1, 678-1). They are delineated in charts that list each defendant's name and the corresponding cost of service (id.). Furthermore, the Receiver included a report, generated by the law firm's computer billing system, which contains information from the actual billings for these services (id.).

Below is a composite chart of the Receiver's requested costs (see Docs. 649-1, 678-1):

Defaulted Defendant	Cost	Cost Type
Crowley	\$683.70	Service of Process
Divergent	\$1,256.25	Service of Process
Johnston	\$163.85	Service of Process
Kerrigan	\$228.85	Service of Process
Lipinczyk	\$173.85	Service of Process
Nagel	\$173.85	Service of Process
Petralis	\$173.85	Service of Process

Defaulted Defendant(s)	Cost	Cost Type
The Arduinis	\$391.55	Service of Process
Barton	\$205.25	Service of Process
Berry	\$740.55	Service of Process
Black Dragon	\$173.85	Service of Process
The Charleses	\$337.70	Service of Process
The Clarks	\$247.70	Service of Process
	\$15.50	Priority Mail
Commonwealth Networking	\$315.00	Service of Process
Crichlow	\$140.00	Service of Process
The Daidones	\$237.70	Service of Process
DeYoung	\$489.15	Service of Process
Flander	\$153.85	Service of Process
The Fuksmans	\$337.68	Service of Process
Gladman	\$1,085.70	Service of Process
Hicks	\$163.85	Service of Process
The Hubbards	\$237.70	Service of Process
Impulse Ventures	\$113.85	Service of Process
Kerrigan Mgt.	\$228.85	Service of Process
The LaVecchias	\$347.70	Service of Process
Leach	\$173.85	Service of Process
Life's Elements	\$369.10	Service of Process
Luda	\$790.70	Service of Process
Lynch	\$173.85	Service of Process
Marshall	\$163.85	Service of Process
McClare	\$173.85	Service of Process
Petralis, Jr.	\$173.85	Service of Process
Renner	\$173.85	Service of Process
Rubel	\$173.85	Service of Process
Vona	\$173.85	Service of Process
Wood	\$173.85	Service of Process

The Receiver avers that these “costs were reasonable and of necessity to the Receiver’s case” (Doc. 649-1, ¶6; Doc. 678-1, ¶6). None of the defendants responded to the motions.

Despite the lack of objections, I directed the Receiver to submit a supplemental memorandum explaining why some of the service of process expenses were substantially higher than the typical fee (Doc. 704). The Receiver explained that the increased costs were due to several defendants

evading service and/or the Receiver employing nationwide search services to locate defendants (Doc. 717, pp. 2–4).

The highest service of process costs were related to those defendants who evaded service (see Doc. 717, pp. 2–3 (Divergent, \$1,256.25; Gladman, \$1,085.70; Luda, \$790.70; Berry \$740.55)), and the Receiver attached the process servers' notes detailing those difficulties (Doc. 717-1, Ex. A). For example, the Receiver summarized with respect to defendant Divergent Investments, LLC:

Service evader Ronald Lawrence, RA for Divergent: Divergent served in Florida to RA's father, hired three separate process servers, multiple service attempts, skip trace reports on RA, process server made contact and communicated with RA who refused to coordinate service, process server prepared Affidavit of Evasion, eventual service on Maryland State Dept. of Assessments and Taxation

(Doc. 717, p. 3). Additionally, when attempting to serve defendant Todd Berry at his residence, the occupant "stated that he did not know Berry and Berry does not live at the address," but that after incurring substantial expenses to serve Berry elsewhere, it was "discover[ed] Berry resided at [the] original address" (id., p. 2). It is also alleged that defendant Piotr Luda "refused to open [the] door" resulting in multiple service attempts with two process servers (id., pp. 3–4). None of the defendants filed a response to the

supplemental memorandum or otherwise challenged the Receiver's assertions.

## II.

The Receiver argues that he is entitled to recover costs under Federal Rules of Civil Procedure 54(d)(1) and 4(d)(2) (Docs. 649, 678). Rule 54(d)(1) provides that "costs other than attorneys' fees shall be allowed as of course to the prevailing party." Costs recoverable under this rule are enumerated in 28 U.S.C. 1920 and include "Fees of the clerk and marshal." §1920(1). The Eleventh Circuit has held that, since it is routine practice to employ a private process server, instead of the U.S. Marshal, to serve a summons and complaint "private process server fees may be taxed pursuant to §§1920(1) and 1921." U.S. E.E.O.C. v. W&O, Inc., 213 F.3d 600, 624 (11th Cir. 2000). Thus, as the prevailing party against these defaulted defendants, service by a private process server is taxable under §1920.

However, the Eleventh Circuit held further that taxable costs for a private process server under §1920 may not exceed the cost of having the U.S. Marshals Service effectuate service. See U.S. E.E.O.C. v. W&O, Inc., supra, 213 F.3d at 624. The U.S. Marshal may collect \$65 per hour for service of process. 28 C.F.R. § 0.114. The Receiver's motions do not detail the hourly rate of the process servers, or identify the costs of other services

necessary to locate the defendants. This circumstance does not, however, preclude the requested awards for service of process because they are fully compensable under Rule 4(d), F.R.Civ.P.

Rule 4(d), F.R.Civ.P., authorizes an award of such expenses when, as here, the defendants did not waive service of process. That Rule provides, in pertinent part:

**(d) Waiving Service.**

**(1) Requesting a Waiver.** An individual, corporation, or association that is subject to service under Rule 4(e), (f), or (h) has a duty to avoid unnecessary expenses of serving the summons. The plaintiff may notify such a defendant that an action has been commenced and request that the defendant waive service of a summons ....

....

**(2) Failure to Waive.** If a defendant located within the United States fails, without good cause, to sign and return a waiver [of service of the summons] requested by a plaintiff located within the United States, the court must impose on the defendant: (A) the expenses later incurred in making service ....

In sum, “[t]he rule operates to impose upon the defendant those costs that could have been avoided if the defendant had cooperated reasonably in the manner prescribed.” Rule 4, F.R.Civ.P., Advisory Committee Notes, 1993 Amendment, subdivision (d).<sup>1</sup>

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<sup>1</sup>Rule 4(d)(2) governs over Rule 54(d)(1). See Wright, Miller & Kane, Federal

In this regard, the Receiver averred that, prior to attempting service of process on these defendants, he “mailed [to them] notices of the lawsuit, copies of the Complaint, and waivers of service of summons” but they “failed to sign and return the waivers, which resulted in service of process expenses” (Doc. 649-1, ¶5; Doc. 678-1, ¶5).

Significantly, there is no express cap on the amount of reimbursement for service of process expenses under Rule 4(d)(2). Furthermore, the Advisory Committee Notes acknowledge that extraordinary expenses may be necessary to effect service of process, as they state that Rule 4(d)(2) is “useful in dealing with defendants who are furtive [or] who reside in places not easily reached by process servers.” See 1993 Amendment, subdivision d.

Most of the service of process costs requested in this matter range between \$113.85 and \$173.85 (see Doc. 649-1, 678-1). These amounts do not appear unreasonable on their face, especially considering that none of those defendants have filed an opposition to the requested reimbursement.

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Practice and Procedure, Civil 4<sup>th</sup> (2014) Vol. 10, §2670, p. 268 (“[A] number of federal rules have provisions relating to costs, which in light of their incorporation by Rule 54(d), are controlling in civil actions.”); see, e.g., Estate of Darilus v. Garate, 401 F.3d 1060, 1063 (9th Cir. 2005).



Furthermore, the Receiver has justified the more costly service of process expenses. Thus, the Receiver explained that the increased costs were due to defendants evading service of process, and to conduct “nationwide service and search” for those defendants that the Receiver lacked contact information (see Doc. 717, p. 3). The Receiver included notes of the extraordinary efforts made to effect service of process, and adequately substantiated these expenses (Doc. 717-1). Consequently, while some of the service of process costs are substantially higher than the typical fee, those expenses are adequately supported and reasonable under the circumstances. Thus, as the court stated in Xfinity Mobile v. AS Trading Corp., 2020 WL 5215097, No. 20-mc-80722 (S.D. Fla. Sept. 1, 2020): “Evasion of service of process comes at a price, and Respondents shall not have to pay it.”<sup>2</sup> Moreover, by failing to respond to the motions, the defendants have waived any right to contradict the Receiver’s evidence.

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<sup>2</sup>Notably, courts have held that similar, and higher, service of process costs were reasonable when they resulted from attempts to evade service. See, e.g., Xfinity Mobile v. AS Trading Corp., *supra*, 2020 WL 5215097 at \*6 (Fees exceeding \$7,000 to effect service of process upon two people were reasonable because they were attempting to evade service); Kasby v. Upper Deck Bar and Grill, LLC, 2013 WL 6050747, at \*10 n.8, No. 6:11-cv-152-Orl-36GJK (approving reimbursement of \$935.75 for service of process because “much of the costs associated with service of process were incurred as a result of multiple attempts to serve process on [the defendant] who was allegedly evading service”).

III.

For the foregoing reasons, I recommend that the Omnibus Motion to Tax Costs Against Defaulted Defendants and the Second Omnibus Motion to Tax Costs Against Defaulted Defendants (Docs. 649, 678) be granted to the extent that the judgments against the defendants identified in the chart on page three of this Order be amended to include the corresponding service of process expenses.

Respectfully submitted,



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THOMAS G. WILSON  
UNITED STATES MAGISTRATE JUDGE

DATED: MARCH 25, 2021.

NOTICE TO PARTIES

A party has fourteen days from this date to file written objections to the Report and Recommendation's factual findings and legal conclusions or to seek an extension of the fourteen-day deadline. A party's failure to file written objections waives that party's right to challenge on appeal any unobjected-to factual finding or legal conclusion the district judge adopts from the Report and Recommendation. 11th Cir. R. 3-1.