IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

CASE NO. 14-21348-CA-01

JEAN-LUC BRUNEL, individually, and MC2 MODEL & TALENT MIAMI, LLC.

Plaintiffs,

vs.

JEFFREY EPSTEIN, TYLER MCDONALD, TYLER MCDONALD D/B/A/ YLORG

Defendants.

_____/

MEMORANDUM IN OPPOSITION TO MOTION FOR RULING ON SERVICE OF PROCESS

Having already once received this Court's indulgence for Plaintiffs' total disregard of Florida's procedural rules governing proper service of process and a 120-day extension of the time within which to effect service (effectively providing Plaintiffs with a 2-year service window), Plaintiffs again ignore Florida's jurisdictional prerequisites with their improper service attempt. They have disregarded this Court's new service deadline even after receiving prompt and repeated notice from the undersigned counsel of their improper and ineffective service attempt, and, now that the deadline has long passed, ask this Court to bless their misconduct for a second time.

Service of process in this case is governed by Florida law. Florida Statutes Section 48.031 (1)(a) requires that service of original process be made by personally delivering a copy of the complaint, petition or other initial pleading or paper to the person to be served, or by leaving the copies at his or her usual place of abode with any person residing therein who is 15 years of age or older and informing the person of their contents. Plaintiffs have not met a single one of these requirements in this case.

When Plaintiffs first filed their complaint in August 2014, Defendant Jeffrey Epstein was not even a party. Plaintiffs amended their complaint in January 2015 to assert two non-business counts against Mr. Epstein personally and caused a summons to be issued on February 9, 2015. In more than two years since Plaintiffs amended their complaint to include Mr. Epstein as a party, they have not made a single attempt to serve Mr. Epstein at his residence and usual place of abode in the United States Virgin Islands.

Plaintiffs made a first half-hearted attempt on March 10, 2015 to serve Mr. Epstein in New York by leaving process with a woman at a location that was not Mr. Epstein's usual place of abode. The woman with whom the process was left was not a resident of New York, much less the location where service was attempted. Plaintiffs never even filed a Notice of Service of

Process in connection with that failed attempt. The undersigned counsel promptly filed a motion to quash on behalf of Mr. Epstein in April 2015. Plaintiffs waited a full year to respond to that motion to quash and in their response, perhaps conceding that the attempted service was improper, asked this Court to disregard the procedural rules and order that Plaintiffs be permitted to serve Mr. Epstein through legal counsel (not the undersigned) not even of record in this case. After Plaintiffs failed to appear at the hearing that Plaintiffs themselves scheduled on Mr. Epstein's motion to quash, on July 28, 2016, this Court granted Mr. Epstein's motion to quash.

Thereafter, Plaintiffs sought a rehearing, claiming that they did not realize that the hearing they themselves scheduled was proceeding, and on October 5, 2015, this court kindly granted Plaintiffs a full 120 additional days within which to properly serve Mr. Epstein or the matter would be dismissed without further order of this Court.

Although Mr. Epstein's affidavit confirming the location of his residence in the U.S. Virgin Islands was filed as part of Mr. Epstein's original motion to quash, Plaintiffs ignored it. On November 17, 2016, Plaintiffs chose instead to make only their second service attempt in the 647 days since the original summons was issued to Mr. Epstein (and Plaintiffs' one and only service attempt during the period of extension granted by this Court) by leaving the summons and amended complaint with a non-party at an office address, which was clearly not Mr. Epstein's personal residence. Among the multitude of procedural defects in connection with that failed attempt, there is simply no legal authority for substitute service on Mr. Epstein in this matter by leaving process at an office address.

Florida Statute Section 48.031 (2)(b) does allow substitute service under limited circumstances that are not applicable here. Under Section 48.031(2)(b) substitute service is permitted on a sole proprietorship by serving the person in charge of the business at the time of service if two prior attempts to serve the owner have been made at that place of business. Plaintiffs' single attempt at service within this rule is faulty in several respects.

As it relates to Mr. Epstein, the amended complaint filed herein does not make claim against a business or fictitious entity. Mr. Epstein is named as a defendant in his individual capacity. Statues governing substitute service of process must be strictly construed and must be strictly complied with. See Hauser Vs. Schiff, Florida Appellate Court or Fla.App., 341 So.2d 531 and cases cited therein. Moreover, nowhere in any of the papers filed by Plaintiffs is it alleged that Mr. Epstein was the owner of a sole proprietorship that does business at the purported service address in St. Thomas. In fact, the causes of action asserted against Mr. Epstein in the amended complaint are for decidedly personal conduct by Mr. Epstein in his individual capacity unrelated to the operation by Mr. Epstein of any business at that office address, or anywhere else for that matter. The complaint filed herein does not sound in any type of business related irregularity, and certainly, the acts complained of do not and did not arise out of business type activities. Florida Statute Section 48.031 (2)(b) is entirely inapplicable to the facts of this case.

Even if, by some stretch of the imagination, section 48.031(2)(b) could be read to apply to service attempts on Mr. Epstein (which it cannot), nowhere in Plaintiffs' notice of service of process, the affidavits or the other documents filed by Plaintiffs is it alleged that two attempts to personally serve Mr. Epstein as owner had previously been made at this place of business. For that reason alone, service must also be found to be ineffective.

The motion and notice filed by Plaintiffs assert that service is impossible on Little St. James, because this is a private island. Such assertion is absurd on its face, as service of process takes place routinely on private property. Little St. James is one of several residential cays in the U.S. Virgin Islands. The mode of transportation to such cays may be by boat rather than car, but certainly service of process is possible on any of them. Access to such cays by boat is commonplace in the U.S. Virgin Islands, and Little St. James is well-identified and easily located on any map. As is evident from the photograph of Little St. James provided by Plaintiffs in connection with their motion, the Island features a sizable dock by which those arriving by boat may access the Island. That dock effectively serves as the front door to Little St. James, and as with any private residence, there was absolutely nothing preventing a process server from proceeding to the front door and inquiring of Mr. Epstein. Access to Little St. James was certainly available in this case and should have been attempted, but never was.

As a further example of Plaintiffs' defective service, Florida Statute Section 48.031 (5) requires that a person serving process place on the first page of at least one of the processes served, the date and time of service, and his or her identification number and initials for all service of process. Nowhere in the notice or the documents attached thereto is there any information or indication that this requirement was complied with in Plaintiffs' failed and improper attempt at substitute service.

In addition, Florida Statue Section 49.031 (1)(a) requires that the person serving the process inform the person served of the contents of that which is being served. Nowhere in Plaintiffs' motion, notice of service of process or the papers attached thereto is it indicated or stated that Plaintiffs complied with even this basic requirement.

On December 7, 2016, the undersigned attorney informed the attorney for the Plaintiffs that the November 17, 2016 service attempt was improper and ineffective in that it did not comply with the statutory requirements of Florida Statutes Section 48.031. Copy of December 7, 2016 letter attached hereto as Exhibit A. Rather than attempt proper service even a single time before the expiration of the extended service window granted by the Court, Plaintiffs chose to do nothing until well after that window closed. Having received the letter from Mr. Epstein's counsel on December 7, 2016, a full two months before the expiration of the extension period, Plaintiffs certainly could have filed their Motion For Ruling On Service Of Process on Defendant, Jeffrey Epstein, With Attached Order, before the expiration of the service window, so that if the Court found, as it should, that Plaintiffs' service is defective, Plaintiffs would have had sufficient time before the window closed to effectuate service properly. Instead, and as they have done for the past two years, Plaintiffs chose to do nothing. Now they ask this Court to again indulge their flagrant disregard for Florida law and the express order of this Court and hold that proper service has been obtained, even though, to do so would fly in the face of Florida law.

Because the attempted substitute service was inappropriate and ineffective in numerous respects, the Court should not grant Plaintiff's motion for ruling on service of process, and should rule that there has been no service of process on Jeffrey Epstein in this matter. Further, the Court should grant Epstein's Motion to Dismiss, which accompanies this Memorandum.

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that a true and correct copy of the foregoing has been electronically furnished via email and/or E-file on the 30th day of March, 2017 to Joe Titone, joetitone708@comcast.net.

W. CHESTER BREWER, JR., P.A.

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By: */s/ W. Chester Brewer, Jr.*
W. CHESTER BREWER, JR., ESQUIRE
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Joseph HAUSER, Appellant,

v.

Neil SCHIFF, as Receiver of Carriage House Apartment Hotel, Appellee.

No. 76-203.

District Court of Appeal of Florida, Third District.

Jan. 11, 1977.

Defendant in a civil action moved to dismiss for lack of jurisdiction over the person and insufficient service of process. The Circuit Court, Dade County, Paul Baker, J., denied the motion to dismiss, and plaintiffs appealed. The District Court of Appeal, Sack, Martin, Associate Judge, held that substituted service of process at defendant's office upon a secretary therein did not comply with applicable statute or provisions.

Reversed.

1. Process ⇐79

Substituted service of summons and complaint at defendant's place of business was insufficient where summons and complaint were merely left with defendant's secretary. West's F.S.A. § 48.031.

2. Process ⇐77

Statutes governing substituted service of process must be strictly construed and must be strictly complied with. West's F.S.A. § 48.031.

3. Process ⇐79

For purpose of statute providing for substituted process, "person of the family" may be a visitor for prolonged period in abode of person to be served, but person actually served must be residing in his home. West's F.S.A. § 48.031.

See publication Words and Phrases for other judicial constructions and definitions.

Ciravolo & Feldman, Miami and Howard Horowitz, Tallahassee, for appellant.

Smith, Mandler, Smith, Parker & Werner, Joe Unger, Miami Beach, for appellee.

Before HENDRY, C. J., PEARSON, J., and SACK, MARTIN, Associate Judge.

SACK, MARTIN, Associate Judge.

In an attempt to perfect personal service of process upon the appellant, one Freddy Carreras went to the office of Fleetwood Insurance Agency, on the 6th floor of 3550 Biscayne Boulevard, Miami. Mr. Carreras, upon his arrival spoke to a secretary and informed her he had come to serve the appellant with a paper. Thereafter, without seeing the appellant, Mr. Carreras left the summons and complaint with the secretary and departed. He did not, at any time, inform the secretary as to the nature of the papers.

[1] Based on the foregoing, the appellant moved to dismiss for lack of jurisdiction over the person, insufficiency of process, and insufficiency of service of process on the ground that process was not properly served pursuant to Section 48.031, Florida Statutes (1975). By this appeal, the appellant challenges the correctness of the trial court's denial of the motion to dismiss. We agree with the appellant and hereby reverse.

[2, 3] Section 48.031, Florida Statutes (1975) reads as follows:

"Service of original process is made by delivering a copy [of it] to the person to be served with a copy of the complaint, petition or other initial pleading or paper or by leaving the copies at his usual place of abode with some person of the family who is fifteen years of age or older and informing the person of their contents. Minors who are or have been married shall be served as provided by this section."

Statutes governing substituted service of process must be strictly construed and must be strictly complied with. *American Liberty Insurance Company v. Maddox*, 238 So.2d 154 (Fla.2d D.C.A. 1970); *Atlas Van Lines, Inc. v. Rossmoore*, 271 So.2d 31 (Fla.2d

D.C.A. 1972). The term "usual place of abode" contained in Section 48.031, Florida Statutes (1975) means where the person is actually living at the time of service. *State v. Heffernan*, 142 Fla. 496, 195 So. 145 (1940). Furthermore, a "person of the family" may be a visitor for a prolonged period to the abode of the person to be served, but there is no question that the person actually served must be residing in his home. *Sangmeister v. McElnea*, 278 So.2d 675 (Fla.3rd D.C.A. (1973); *Couts v. Maryland Casualty Company*, 306 So.2d 594 (Fla.2d D.C.A. 1975).

In light of the foregoing, there is no way this court can construe substituted service of process at a man's office upon a secretary therein to constitute compliance with the terms of Section 48.031, Florida Statutes (1975). This is so, notwithstanding a failure to show the office in question was in fact the appellant's office and a conclusive showing that the process server failed to inform the secretary as to the contents of the papers.

Therefore, the order appealed is hereby reversed, and the cause is remanded to the trial court for further proceedings not inconsistent herewith.

Reversed and remanded, with directions.

Anthony John PEDONE, Appellant,

v.

The STATE of Florida, Appellee.

No. 76-441.

District Court of Appeal of Florida, Third District.

Jan. 11, 1977.

Rehearing Denied Jan. 27, 1977.

Defendant was convicted before the Circuit Court for Dade County, Alan R. Schwartz, J., of burglary, robbery, attempted murder and grand larceny, and he appealed. The District Court of Appeal held that evidence that defendant and accomplice gained entry through trickery rather than breaking and entering did not present reversible error as regards burglary conviction but that it could not be said that pretrial amendment to complaint to change one count from aggravated assault to attempted first-degree murder was not prejudicial and, hence, conviction and sentence under such count for attempted murder in the second degree was required to be reversed for new trial.

Affirmed in part, reversed in part and remanded.

1. Criminal Law ⇐1167(4)

Conviction and sentence for attempted murder in the second degree was required to be reversed for new trial since although there was doubt that pretrial amendment to complaint to change one count from aggravated assault to attempted first-degree murder prejudiced defendant; reviewing court was not in a position to hold on the record that it was not prejudicial.

2. Burglary ⇐9

Where entrance is obtained by trick or fraud, a conviction for burglary will stand; hence, evidence that defendant and accomplice gained entry through trickery rather than by breaking and entering did not present reversible error as regards burglary conviction.

Engel & Mishkin and David B. Javits, Miami, for appellant.

Robert L. Shevin, Atty. Gen., and Ira N. Loewy, Asst. Atty. Gen., for appellee.

Before HENDRY, C. J., and PEARSON and HAVERFIELD, JJ.

PER CURIAM.

The defendant Anthony John Pedone was found guilty by a jury of the separate crime