

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

FEDERAL HOME LOAN MORTGAGE CORPORATION, :
 : CIVIL ACTION NO. 3:01-1932
 :
 Plaintiff : (CAPUTO, J.)
 : (MANNION, M.J.)
 V. :
 :
 RICHARD R. STEVENS, :
 :
 Defendant :
 :

MEMORANDUM AND ORDER

On October 5, 2001, the plaintiff filed an "Action in Mortgage Foreclosure" against the defendant. (Doc. No. 1). Thereafter on November 27, 2001, plaintiff filed a "Motion For Special Service Pursuant To Special Order Of Court." (Doc. No. 3). The request was made because of plaintiff's apparent inability to serve the defendant with a copy of the complaint.

Federal Rule of Civil Procedure 4(c) requires that service upon an individual be "pursuant to the law of the state in which the district court is located." In Pennsylvania, Pa.R.Civ.P.

400 and 400.1 require service to be made by the sheriff, or in certain actions, by a competent adult who is not a party to the action. According to plaintiff's memorandum of law, it complied with this rule by directing service by the sheriff.

(Doc. No. 4). When service cannot be made, the Pa.R.Civ.P. provides the following:

(a) If service cannot be made under the applicable rule, the plaintiff may move the court for a special order directing the method of service. The motion shall be accompanied by an affidavit stating the nature and extent of the investigation which has been made to determine the

whereabouts of the defendant and the reasons why service cannot be made. (Pa.R.Civ.P. 430(a)).

A note to Rule 430(a) gives examples of "good faith effort."

It includes: inquiries of postal authorities, including inquiries pursuant to the Freedom of Information Act, 39 C.F.R., Part 265; inquiries of relatives, neighbors, friends and employers of the defendant; examination of local telephone directories, voter registration records, local tax records and motor vehicle records. This list is not exhausted by any means, however it does indicate the types of activities needed in order to justify a special order of service.

A successful motion for alternative service requires three (3) elements: (1) an unsuccessful attempt to properly serve the defendant; (2) a good faith effort to locate the defendant; and, (3) a method of alternative service that is reasonably calculated to give actual notice to the defendant. Ayr Motor Express, Inc. v. Keystone Transportation Service, Inc., 1999 W.L. 94811 (E.D. Pa.) (citing Clayton v. Jung, 173 FRD 138, 140 (E.D. Pa. 1997)).

It is clear that the plaintiff has met the first requirement by attempting unsuccessfully to properly serve the defendant. As to the second requirement, a good faith effort to locate the defendant, the court is not satisfied that the plaintiff has fulfilled its obligation in this regard. According to the exhibits attached to the certificate of service (Doc. No. 5), the plaintiff requested information from Players National Locator (PNL) on September 26, 2001. Apparently, as a result of that information, the plaintiff was given a "last known address" of 578 Blue Mountain Lake, East Stroudsburg, Pennsylvania, 18301, a verified residential

telephone number, and a new address of 1410 Village Oaks Court, Mount Airy, Maryland, 21771. Following the collection of this information, it appears that the plaintiff, on one occasion, attempted to serve the defendant at 1410 Village Oak Court, Mount Airy, Maryland, 21771. In its Certificate of Inability to Serve, the plaintiff indicated "Current tenant(sic) - says Stevens is related to her landlord and used to live there. Post office shows change of address to - 578 Blue Mt. Lake, E. Stroudsburg, PA 18301." (Doc. No. 5, Ex. "C"). Thereafter, there appears to have been one attempt to serve the defendant at 575 Blue Mountain Lake, East Stroudsburg, Pennsylvania, 18310, in which the Certificate of Inability to Serve states "Vacant Residence upon arrival 11-2-01 at 12:45 PM. Realtor Toralli stated & confirmed same. No forwarding address available per USPS." (Doc. No. 5, Ex. "A").

There is no indication that the plaintiff spoke with relatives, friends, or employees of the defendants, it also does not appear that the plaintiff has examined any local telephone directories, voter registration records, local tax records or motor vehicle records as recommended by the Pennsylvania rule. In addition, the plaintiff has included as part of its submission that it has a verified residential phone number for the plaintiff. (Doc. No. 5, Ex. "B"). There is no indication that the plaintiff has attempted to use this information in order to effectuate process.

Since there appears to have only been two attempts at personal service, one in Pennsylvania, one in Maryland and one paper search done through Players National Locator (PNL), the

court does not believe that the plaintiff has made sufficient "good faith" efforts for personal service as to entitle it to a special order directing an alternative method of service.

For the reasons stated, the plaintiff's motion for a special service pursuant to special order of court (Doc. No. 3) is **DENIED**. The plaintiff may renew its request once it has made more diligent efforts to locate and serve the defendant, in line with the examples enunciated in the statute.

An appropriate order will follow.

MALACHY E. MANNION
United States Magistrate Judge

Dated: November 30, 2001

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O R D E R

AND NOW this 30th day of November, 2001, upon consideration of the motion of the plaintiff to allow for Special Service Pursuant To Special Order of Court (Doc. No. 3), **IT IS HEREBY ORDERED THAT:**

- (1) the plaintiff's motion is **DENIED**; and,
- (2) the plaintiff may resubmit the motion if it is unsuccessful in serving the defendant after a more thorough effort in line with the requirements of Pa.R.Civ.P. 430(a).

MALACHY E. MANNION
United States Magistrate Judge