

On March 29, 2001, Plaintiff Huffman filed her complaint against New Prime, Inc. and Abel Lormand. On January 10, 2002, Plaintiff mailed Defendant Lormand a Notice and Acknowledgment for Service by Mail. Defendant Lormand signed the acknowledgment on January 29, 2002, but returned it to Plaintiff's counsel without signing the Waiver of Service of Summons. Plaintiff's counsel immediately sent Defendant Lormand a copy of the Notice and Acknowledgment accompanied by a letter informing Defendant Lormand that he had not signed the waiver and the cost related to personal

service. On March 6, 2002, Plaintiff requested an extension of time to serve Defendant Lormand. This Court granted her extension and permitted her to serve Defendant Lormand no later than May 9, 2002. During this period of time, Plaintiff hired a process server who attempted to serve Defendant Lormand on fifteen occasions; however, it was not until May 15, 2002, that the service process was successful and Defendant Lormand was served. Defendant Lormand filed his Second Motion to Dismiss on August 16, 2002.

II. DISCUSSION

Rule 4(m) of the Federal Rules of Civil Procedure states, “[i]f service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court . . . shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified period of time. . . .” Fed. R. Civ. P. 4(m). “[P]rovided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate time.” Id. In this case, Plaintiff Huffman unsuccessfully attempted to serve Defendant Lormand on several occasions. Plaintiff attempted service by mail, which was acknowledged by Defendant Lormand but did not sign the Waiver of Service, and Plaintiff attempted to serve Defendant Lormand by hiring a process server, who attempted service on fifteen occasions. Additionally, Plaintiff successfully served Defendant Lormand only six days after the time to serve had expired.

Plaintiff Huffman exercised due diligence by continually attempting to serve

Lormand. Plaintiff Huffman has shown good cause for her failure to serve Lormand in the specified time. In accordance with Rule 4(m), this Court retroactively extends the time for Plaintiff Huffman to serve Lormand and deems the service upon Abel Lormand on May 15, 2002, as timely.

III. CONCLUSION

For the foregoing reasons, Defendant Abel Lormand's second motion to dismiss is hereby DENIED.

IT IS SO ORDERED.

Date: September 17, 2002

/s/ Ortrie D. Smith
ORTRIE D. SMITH, JUDGE
UNITED STATES DISTRICT COURT