

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

SUSAN FORD AND DENNIS FORD,)
)
 PLAINTIFFS))
)
v.)
)
NATIONWIDE MUTUAL FIRE)
INSURANCE COMPANY,))
)
 DEFENDANT))

CIVIL No. 01-133-P-H

**MEMORANDUM DECISION AND ORDER ON
PLAINTIFFS' MOTION TO REMAND**

The Supreme Court recently decided that formal service of process is a prerequisite to the running of the thirty-day removal period under 28 U.S.C.A. § 1446(b) (1994). Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc., 526 U.S. 344, 347-48 (1999). The interesting question in this case is when service by mail under Maine Rule of Civil Procedure 4(c)(1) (2000) occurs for starting the thirty days: upon receipt, as the plaintiffs argue, or only when the defendant signs and returns the acknowledgment form that Rule 4(c)(1) requires, as the defendant argues? Under the Maine Rule, service by mail is not effective *unless* the acknowledgment form is returned. I conclude, therefore, that formal service does not occur *until* the acknowledgment form is returned.

BACKGROUND

The relevant facts are undisputed.¹ The plaintiffs filed the case in Cumberland County Superior Court. On March 30, 2001, the plaintiffs sent the defendant's lawyer service by mail, and the lawyer received it on April 2, 2001. On April 18, 2001, the lawyer signed the accompanying acknowledgment form and returned it.² The defendant then removed the case to this Court on May 18, 2001, forty-six days after its lawyer received the complaint, but exactly thirty days after he returned the acknowledgment form.

ANALYSIS

In Murphy Bros., the Supreme Court resolved a division that had arisen in the lower courts regarding whether mere receipt of the complaint was enough to trigger the thirty-day removal period under 28 U.S.C. § 1446(b) or whether formal service of process was required. Murphy Bros., 526 U.S. at 347-49. The Court held that the thirty-day period cannot begin before formal service of process. It rested its decision on the premise that “[s]ervice of process . . . is fundamental to any procedural imposition on a named defendant” and that—absent waiver of service³— “the summons continues to function as the *sine qua non* directing an individual or entity to participate in a civil action or forgo procedural or substantive rights.” Id. at 350-51.

¹ There is a factual dispute regarding whether and when the defendant authorized its lawyer to accept service, but under my analysis that dispute is irrelevant.

² The parties focus on when the defendant's lawyer signed the acknowledgment; I assume he returned it the same day.

³ There is no suggestion that the defendant here waived service.

Maine R. Civ. P. 4(c) provides for service as follows:

(1) By mailing a copy of the summons and of the complaint (by first-class mail, postage prepaid) to the person to be served, together with two copies of a notice and acknowledgment form and a return envelope, postage prepaid, addressed to the sender. If no acknowledgment of service under this paragraph is received by the sender with 20 days after the date of mailing, service of the summons and complaint shall be made under paragraph (2) [by a sheriff or deputy] or (3) [by any other method permitted or required] of this subdivision.

Under the plain language of the rule, mailing and receipt are not enough to accomplish service. Unless the acknowledgment of service is returned, a plaintiff has failed to perfect service and must turn to other kinds of service. The advisory committee's notes confirm this reading. They explain that service by mail is invalid if the original sender does not receive back the acknowledgment form, and that if service by mail is attempted but fails for lack of acknowledgment, the "plaintiff must resort to either personal service or another method as appropriate in order to obtain jurisdiction." Me. Rule Civ. P. 4(c) advisory committee's notes to 1992 amendment. They also explain that, for purposes of determining the time for answer, the date of service is "the date on which the defendant mails the acknowledgment, which constitutes acceptance of this form of service." Me. Rule Civ. P. 4(c) advisory committee's notes to 1991 amendment. I conclude that the date of service by mail under Me. R. Civ. P. 4(c)(1) is the date on which the defendant mails or returns the acknowledgment form. That day is therefore the date that starts the thirty-day removal period under 28 U.S.C.A. § 1446(b).

In this case there is no dispute that the defendant did not return the

acknowledgment form until April 18, 2001. It removed the case on May 18, 2001, exactly thirty days after it returned the acknowledgment form. The removal was therefore timely under 28 U.S.C.A. § 1446(b). Accordingly, the plaintiffs' motion to remand is **DENIED**.

So ORDERED.

DATED THIS 13TH DAY OF JUNE, 2001.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

U.S. District Court
District of Maine (Portland)
CIVIL DOCKET FOR CASE #: 01-CV-133

SUSAN FORD
plaintiff

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DENNIS FORD
plaintiff

TERRENCE GARMEY, ESQ.
(See above)

v.

NATIONWIDE MUTUAL FIRE
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