

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

ROSA W. SCARCELLI,

Plaintiff

v.

PAMELA W. GLEICHMAN,

Defendant

)
)
)
)
)
)
)
)
)
)
)

No. 2:12-CV-72-GZS

**MEMORANDUM DECISION ON PLAINTIFF’S MOTION FOR SERVICE BY
ALTERNATE MEANS**

The plaintiff, Rosa W. Scarcelli, seeks leave to serve the defendant, Pamela W. Gleichman, by alternate means in this action alleging breach of fiduciary duty. Amended Complaint for Declaratory Judgment and Equitable Relief (Docket No. 4); Motion for Service by Alternate Means (“Motion”) (Docket No. 5). For the reasons that follow, I grant the motion.

I. Facts

In support of her motion, the plaintiff has submitted the declaration of James D. Poliquin, Esq., which establishes the following:

1. When the law firm that represents the plaintiff in this action recently sought to serve process upon the defendant, Ms. Gleichman, in a related action, it retained Cook County Civil Process Service (CCCPS) to make service. William Sheehan of CCCPS attempted to make that service.
2. Mr. Sheehan made repeated and extensive efforts to serve Ms. Gleichman, all of which were unsuccessful. *See* Exhibit A to Attorney Poliquin’s affidavit.

3. Attorney George Marcus and others in his office have been representing Ms. Gleichman as managing general partner of Oak Knoll Associates LP and are identified as the firm to receive notice under the Purchase and Sale Agreement for the Oak Knoll property that is the subject of this action.

4. On February 29, 2012, Attorney Poliquin emailed a copy of the complaint in this matter to Attorney Marcus and Attorney Lee Bals and requested that they advise him whether they would accept service for Ms. Gleichman, as they eventually did in the related matter referred to above.

5. After a follow-up request, Attorney Bals advised Attorney Poliquin during the week of March 12, 2012, that he was not authorized by his client to accept service.

In her motion, the plaintiff further asserts the following:

1. Upon information and belief, Ms. Gleichman has already received a copy of the complaint from Attorney Marcus.

2. Ms. Gleichman lives in Chicago, Illinois, with a second home located in Portland, Maine, at an address known by the plaintiff. Her current email address is also known by the plaintiff.

3. The plaintiff believes that any attempt to serve Ms. Gleichman by certified mail with a return receipt will be refused by her.

II. Discussion

A. The Rules

The applicable federal rule of civil procedure provides:

Unless federal law provides otherwise, an individual . . . may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made[.]

Fed. R. Civ. P. 4(e). It is apparent that the plaintiff's motion is brought under this subsection of Rule 4.

The corresponding Maine civil procedure rule provides, in relevant part:

(1) *When Service May be Made.* The court, on motion upon a showing that service cannot with due diligence be made by another prescribed method, shall order service (i) to be made by leaving a copy of the order authorizing service by alternate means, the summons, and the complaint at the defendant's dwelling house or usual place of abode; or (ii) by publication unless a statute provides another method of notice; or (iii) to be made electronically or by any other means not prohibited by law.

M.R.Civ.P 4(g).

B. The instant case

The plaintiff proposes to serve the defendant in the following manner:

- a. Hand delivery of the Court's Order, summons and complaint to the offices of George J. Marcus at Marcus, Clegg & Mistretta, P.A., One Canal Plaza, Suite 600, Portland, Maine 04101;
- b. Sending the Court's Order, summons and complaint by email to the last known email address [of] Pamela Gleichman; and
- c. Sending the Court's Order, summons and complaint by Certified Mail to Pamela Gleichman at her last known business address at Landmark American Illinois, LLC, . . . Chicago, Illinois, 60616, and to her residence in Maine at . . . , Portland, Maine 04102.

Motion at 3-4.

“Both the United States and Maine Constitutions require that, as a basic element of due process, any defendant against whom suit is commenced is entitled to notice reasonably calculated to give actual notice, and a reasonable opportunity to respond to the action.” *Gaeth v. Deacon*, 2009 ME 9, ¶ 23, 964 A.2d 621, 627. Here, where the defendant is known to be

represented in a related case by the attorney upon whom service will be made, and to whom a copy of the complaint has already been provided, there is little doubt that the defendant has received or will receive actual notice and a reasonable opportunity to respond once the steps set forth above have been accomplished. Nothing further is required. *See generally TD Banknorth, N.A. v. Hawkins*, 2010 ME 104, ¶ 15, 5 A.3d 1042, 1046 (defendant cannot deliberately avoid service).

Accordingly, the plaintiff's motion is **GRANTED**, and service by alternative means shall be accomplished as follows:

- a. Hand delivery of this order, the summons, and the amended complaint to the offices of George J. Marcus at Marcus, Clegg & Mistretta, P.A., One Canal Plaza, Suite 600, Portland, Maine 04101;
- b. Sending this order, the summons, and the amended complaint by email to the last known email address of Pamela Gleichman, with an electronic request for a delivery receipt, which receipt, if received, shall be filed with the court along with an affidavit showing that the email was sent and delivered; and
- c. Sending this order, the summons, and the amended complaint by certified mail and first-class mail to Pamela Gleichman at her last known business address at Landmark American Illinois, LLC, in Chicago, Illinois, and to her residence in Portland, Maine.

Proof of service by the first and third methods shall also be filed with the court.

Dated this 26th day of March, 2012.

/s/ John H. Rich III
John H. Rich III
United States Magistrate Judge

Plaintiff

ROSA W SCARCELLI

represented by **JAMES D. POLIQUIN**
NORMAN, HANSON & DETROY
415 CONGRESS STREET
P. O. BOX 4600 DTS
PORTLAND, ME 04112
774-7000
Email: jpoliquin@nhdlaw.com

PAUL F. DRISCOLL
NORMAN, HANSON & DETROY
415 CONGRESS STREET
P. O. BOX 4600 DTS
PORTLAND, ME 04112
774-7000
Email: pdriscoll@nhdlaw.com

RUSSELL PIERCE
NORMAN, HANSON & DETROY
415 CONGRESS STREET
P. O. BOX 4600 DTS
PORTLAND, ME 04112
774-7000
Email: rpierce@nhdlaw.com