

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

BETTYE J. LAWRENCE,

Plaintiff,

v.

VAUGHN REGSTEAD-SLUMBERLAND FURNITURE
and WELLS FARGO NATIONAL BANK,

Defendants.

ORDER

05-C-540-C

In an order entered in this case on October 5, 2005, I advised plaintiff that it was her responsibility to serve defendants with her complaint and file proof of service as soon as she had it. I noted that the Fed. R. Civ. P. 4(m), allows a plaintiff 120 days after filing a complaint in which to serve the defendants, but that the 120-day deadline is the outside limit. I advised plaintiff that if she acted diligently, she should be able to serve her complaint on the defendants and file proof of service by November 30, 2005. In addition, I provided plaintiff with a memorandum describing how to serve partnerships, corporations or unincorporated associations in a federal lawsuit and the various forms she needed to accomplish service.

On October 20, 2005, plaintiff filed two postal return receipts showing that sometime in early October 2005, she mailed her complaint to the defendants, presumably together with forms seeking waivers of service of summonses and postage pre-paid envelopes as Fed. R. Civ. P. 4. According to the postal receipts, a Josh Perkins signed for the package addressed to Wells Fargo on October 13, 2005, and a Grant King signed for the package addressed to Vaughn Regstead Slumberland Furniture on October 12, 2005. It is not clear whether Josh Perkins and Grant King are persons authorized to accept service of process on behalf of the defendant corporations. (As plaintiff was advised in the memo explaining service procedures for corporations, her complaint package was to have been mailed to an “officer, or managing or general agent (or other agent authorized by appointment or law to receive service of process)” on behalf of the defendant corporation. Fed. R. Civ. P. 4(d)(2)(A). If Josh Perkins and Grant King are officers, managing or general agents or agents authorized to receive service of process, then plaintiff should have received waiver forms from the defendants and submitted a copy of signed waivers to the court. If Perkins and King are not individuals authorized to receive service of process on behalf of the defendant corporations, then plaintiff will have to attempt to serve defendants properly before her time runs out on January 12, 2006.

At this point, I believe it is prudent to require plaintiff to communicate to the court in writing no later than January 4, 2006, what steps she took to identify the officer or agent

authorized to receive service of process on behalf of the defendant corporations or, alternatively, to submit copies of signed waiver forms she may have received from the defendants. If plaintiff complied precisely with the instructions she received from this court concerning the manner in which she was to attempt to obtain waivers from defendants and she has not received completed waiver forms from the defendants, then she will have to arrange immediately for personal service on the defendants' officer or managing or general agent or an agent authorized to accept service of process for the defendants and submit proof of such personal service no later than January 12, 2006. The necessary summons forms for personal service are enclosed to plaintiff with this order.

ORDER

IT IS ORDERED that plaintiff may have until January 4, 2006, in which either to submit completed waiver forms from the defendants or to advise the court in writing what steps she took to identify the officer or agent authorized to receive service of process on behalf of the defendant corporations and to confirm that she complied in every respect with the requirements of Fed. R. Civ. P. 4 for obtaining waivers of service of summonses from the defendant corporations. If, by January 4, 2006, plaintiff fails to submit completed waiver forms, she may have until January 12, 2006 in which to submit proof that she accomplished personal service of her complaint on the defendants. If, by January 12, 2006, plaintiff fails

to comply with this order or show cause for her failure to do so, the clerk of court is to enter judgment dismissing this action without prejudice for plaintiff's failure to prosecute.

Entered this 27th day of December, 2005.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge