

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

FELISA CAMPER : CIVIL ACTION
: :
v. : :
: :
CHARANJEET S. DHILLON, : :
individually and as agent, : :
servant, workman and/or : :
employee of Charanjeet Cab : :
Company and CHARANJEET CAB : :
COMPANY : NO. 03-05043-JF

MEMORANDUM AND ORDER

Fullam, Sr. J.

September , 2004

Plaintiff's complaint, filed September 8, 2003, names as defendants "Charanjeet S. Dhillon, individually and as agent, servant, workman and/or employee of Charanjeet Cab Company and Charanjeet Cab Company," and seeks to recover damages for injuries sustained by plaintiff in an auto accident which occurred on March 6, 2002. In due course, the Clerk's Office reminded plaintiff's counsel that, so far as the record revealed, the complaint had never been served and that, unless service was promptly achieved, the complaint would be dismissed for lack of prosecution. Nothing further occurred and, on May 14, 2004, I entered an order dismissing the case with prejudice for lack of prosecution; but the order included the following provision:

"If, within 20 days, good cause can be shown why this action should not be dismissed, the dismissal will be vacated."

Nothing further occurred until September 10, 2004, when plaintiff's counsel filed a motion for substituted service, seeking leave to achieve service "by mailing both by regular mail and certified mail return receipt requested and by posting true, correct, and attested copies of the complaint in the above-captioned matter to the last known address of said defendants."

Obviously, the motion to permit substituted service cannot be granted, since the action has long since been dismissed with prejudice. Plaintiff's motion does not address the earlier dismissal, or seek to have it vacated. More importantly, the motion provides no basis for vacating the earlier dismissal.

According to the complaint, the individual defendant and the taxicab company he allegedly either owns or works for are both located at 6904 Clinton Road, Upper Darby, Pennsylvania. So far as the record discloses, plaintiff has never made any attempt to achieve direct personal service upon either of the defendants. The motion asserts merely that, on August 26, 2004 (long after this action had been dismissed with prejudice), plaintiff's counsel addressed inquiries to various post offices and was advised by the Upper Darby substation that the address given for defendants was "good." On the same date, plaintiff's counsel attempted to verify defendant's address from voter registration records, but was advised by an official of the Delaware County

Voter Registration Commission, on September 3, 2004, that voter registration records could not be used for that purpose.

In short, plaintiff has shown little or no interest in actually serving the defendants with process, and has shown no justification for substituted service. The pending motion will therefore be denied.

It is perhaps conceivable that plaintiff may be able to establish that the defendants were in fact recipients of the complaint at an earlier date, or that plaintiff might be able to establish a basis for vacating the May 24, 2004, order of dismissal (and justifying the failure to seek that relief within the 20-day period permitted by the dismissal order). The order now entered is without prejudice to such efforts.

An order follows.

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ORDER

AND NOW, this day of September 2004, upon
consideration of plaintiff's motion for leave to make substituted
service of process, IT IS ORDERED:

1. The motion is DENIED.
2. Plaintiff is afforded a further period of 30 days
in which to seek leave to reinstate this action,
if the facts warrant.

John P. Fullam, Sr. J.