

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

EDWARD LORD and HELEN LORD : CIVIL ACTION
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LIVING BRIDGES, et al. : NO. 97-6355

MEMORANDUM ORDER

Presently before the court is the motion of Michelle Iatesta Towers to dismiss for failure to effect timely service of process.

The uncontradicted facts are, in pertinent part, as follow.

This action was originally filed on December 20, 1996 in the United States District Court for the District of New Jersey. Plaintiffs attempted to serve defendant Towers by handing process to someone in charge at the offices of defendant Living Bridges in Pennsylvania. Ms. Towers was an employee of Living Bridges at the time of the events described in the complaint but not when service was attempted. Thus, she was not properly served pursuant to Fed. R. Civ. P. 4, New Jersey law or Pennsylvania law. By memorandum and order of September 19, 1997, Judge Lifland quashed service of process as to Ms. Towers and transferred this action to this court pursuant to 28 U.S.C. § 1406(a).

Plaintiffs did not attempt to serve Ms. Towers until May 29, 1998, more than eight months after Judge Lifland's order. She was served on that date at her home in Ardmore, Pennsylvania. The summons with which she was served was issued by the Clerk of the Court for the District of New Jersey, was dated January 24, 1997 and makes no reference to transfer of the case to this court.

Defendant Towers has resided at the same address in Ardmore since 1995, long before this action was filed. There is no suggestion that Ms. Towers made any attempt to evade service of process.

The form of service with which plaintiff was served aside, Fed. R. Civ. P. 4(m) requires plaintiffs to serve defendants with process within 120 days of the date they file their complaints. A motion to quash service of process or to dismiss a complaint for failure properly to effect service tolls the 120-day period. See Bruley v. Lincoln Property Co., N.C., Inc., 140 F.R.D. 452, 455 (D. Colo. 1991). Nevertheless, even if plaintiffs had the benefit of an entirely new 120-day period within which to effect service on Ms. Towers running from the date of the order quashing service, the attempt to serve process on May 29, 1998 was considerably more than 120 days later.

Plaintiffs have not opposed this motion or made any showing of good cause for their failure timely to effect service

upon Ms. Towers. Dismissal of this action without prejudice as to Ms. Towers is therefore appropriate. See Petrucelli v. Bohringer and Ratzinger, GMBH, 46 F.3d 1298, 1305 (3d Cir. 1995); Suegart v. United States Customs Svc., 180 F.R.D. 276, 278-79 (E.D. Pa. 1998).

ACCORDINGLY, this day of November, 1998, upon consideration of defendants' Motion to Dismiss Pursuant to Rule 4 of the Federal Rules of Civil Procedure (Doc. #9), and in the absence of any response by plaintiffs thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED**, and this action is **DISMISSED** without prejudice as to Ms. Towers.

BY THE COURT:

JAY C. WALDMAN, J.