

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

SHALON A. HAYSEL : CIVIL ACTION  
: :  
v. : :  
: :  
THE HERTZ CORPORATION, HERTZ : :  
RENT-A-CAR COMPANY, DAWN : :  
BERGERON, RHONDA CURRY and : :  
THOMAS HUTCHINSON : NO. 01-0015

MEMORANDUM ORDER

Plaintiff filed this Title VII action on January 2, 2001 against Hertz Corporation and various Hertz managerial employees, including defendant Bergeron. Presently before the court is defendant Bergeron's Motion under Federal Rule of Civil Procedure 12(b)(5) to Have Service of Process upon Her Declared Insufficient which the court assumes is meant to be a motion to dismiss for insufficiency of process consistent with Rule 12(b)(5).

Defendant is a former Senior Station Manager at the Hertz Philadelphia International Airport office ("Hertz PIA"). She left the Hertz PIA office in 1999 to accept a position as City Manager at the Hertz Harrisburg Airport Office. Defendant has been employed as a Senior Station Manager at the Piedmont Triad Airport Hertz office in Greensboro, North Carolina since February 2001.

On April 11, 2001, plaintiff attempted to serve defendant with process through Terri Tinnin, a Back Office

Manager at the Hertz PIA location. Ms. Tinnin informed the process server that Ms. Bergeron was no longer employed at the Hertz PIA location. Ms. Tinnin agreed to take the papers, to attempt to locate Ms. Bergeron's current place of employment and to mail the papers to her.

The Federal Rules of Civil Procedure provide in pertinent part for personal service pursuant to the law of the state in which the district court is located or in which service is effected. See Fed. R. Civ. P. 4(e)(1). Pennsylvania is the state in which the district court is located and within which service was effected. Pennsylvania allows for service of process by handing a copy "at any office or usual place of business of the defendant to his agent or the person for the time being in charge thereof." Pa. R. Civ. P. 402(a)(2)(iii).

For the purpose of effectuating service pursuant to Rule 402, a prospective defendant must exercise greater proprietary responsibility or control over the respective business than the average employee. See Pincus v. Mutual Assurance Co., 321 A.2d 906, 910 (Pa. 1974) (construing Rule 1009, the predecessor to Rule 402); Slater v. Goldberg, 402 A.2d 1073, 1074 (Pa. Super. Ct. 1979) (same); Cohen v. International Org. of Masters, Mates & Pilots, 371 A.2d 1337, 1339 (Pa. Super. Ct. 1977) (same). See also School Dist. of Philadelphia v. Stephan M., 1997 WL 89113, \*1 & n.3 (E.D. Pa. Feb. 27, 1997).

Control or proprietary responsibility cannot generally be inferred simply from an individual's title. See Cohen, 371 A.2d at 1340. Moreover, with respect to a national or international enterprise, "office or usual place of business" implies the specific office where the defendant is employed or at the very least an office over which the defendant exercises some degree of control. Id. Even assuming that defendant's current position involves control over her current Hertz office, it certainly does not give her sufficient control over the Hertz PIA office with which she is no longer associated.

**ACCORDINGLY**, this                    day of June, 2001, upon consideration of defendant Bergeron's Motion Under Federal Rule of Civil Procedure To Have Service Of Process Upon Her Declared Insufficient (Doc. #4), and in the absence of any opposition or other timely response thereto, **IT IS HEREBY ORDERED** that said Motion is **GRANTED** in that Dawn Bergeron is dismissed as a defendant herein without prejudice to plaintiff properly to effect service upon her within thirty days, consistent with Fed. R. Civ. P. 4(m).

**BY THE COURT:**

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**JAY C. WALDMAN, J.**