

United States District Court
for the
Southern District of Florida

Bell Northern Research, LLC,)	
Plaintiff,)	
)	
v.)	Civil Action No. 22-22706-Civ-Scola
)	
HMD America, Inc., and others,)	
Defendants.)	

Order of Partial Dismissal

The Plaintiff, Bell Northern Research, LLC (“Bell Northern”), failed to timely serve Defendant Huaqin Co., Ltd. (“Huaqin”), in this case. The Plaintiff filed its complaint on August 25, 2022, and was responsible for serving the Defendant(s) with a summons and complaint by November 23, 2022. Fed. R. Civ. P. 4(c)(1); Fed. R. Civ. P. 4(m). Previously, the Court notified the Plaintiff, in keeping with Rule 4(m), that the Court would dismiss this case without prejudice unless the Plaintiff established that it served the Defendant timely or that good cause existed for its failure to timely serve the Defendant. (Not. of Upcoming Deadline to Serve, ECF No. 58.) Bell Northern did neither.

Instead, Bell Northern filed a motion for leave to affect alternate service on Defendant Huaqin on November 21, 2022—nearly the eve of the deadline to affect service. (Corr. Mot., ECF No. 73.) Huaqin responded in opposition (ECF No. 74), and Bell Northern replied. (ECF No. 76.) Crucially, Bell Northern did not request an extension of time with which to serve Huaqin in its motion—instead, it only asked the Court to grant leave to effect service by email. (*See generally* Corr. Mot.) Because Bell Northern ignored the deadline and failed to complete service of process or ask the Court for an extension of time to serve based on good cause within the deadline, the Court **dismisses** Bell Northern’s claims against Huaqin, albeit without prejudice.

Additionally, the Court has also “consider[ed] whether any other circumstances warrant an extension of time based on the facts of the case.” *Lepone-Dempsey v. Carroll Cty. Comm’rs*, 476 F.3d 1277, 1282 (11th Cir. 2007). The Court does not discern any such factor nor does the Plaintiff offer one. In fact, the support that Bell Northern offers in its motion for its request to affect service by email demonstrates that there is no reason why the Court should grant such an extension. (Mot. at 1-2.) The Plaintiff’s own timeline establishes that the Plaintiff dithered for months in back-and-forth negotiations with Huaqin’s attorneys, all while never even attempting to effect service under the Hague Service Convention on Defendant Huaqin (a Chinese corporation), as required.

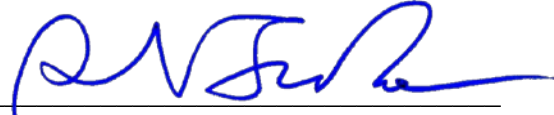
Then, after months of discussions with Huaqin's counsel, and with knowledge of Huaqin's physical address in China, Bell Northern rushed to Court at the nearly literal eleventh hour to request leave to effect service by email. (*Id.*) Predictably, Huaqin opposed this last-ditch effort. (Resp. at 10.) Based on the record in this case, the Court therefore declines to exercise its discretion to afford the Plaintiff an extension of time to serve the Defendant, or to authorize alternate service of process under the Hague Convention

The Court observes that two additional factors support its decision to dismiss the claims against Huaqin. First, although Huaqin was certainly aware of the proceedings, service of process is still a requirement—without proof of service of process (or waiver thereof), the Court lacks jurisdiction over a party. *De Gazelle Grp., Inc. v. Tamaz Trading Est.*, 817 F.3d 747, 750 (11th Cir. 2016) (holding that “notice does not confer personal jurisdiction on a defendant when it has not been served in accordance with Rule 4.”).

Second, although Bell Northern references the Court's prior order in this case authorizing service by email on Defendant Shenzhen Chino-E Communication Co. Ltd. (“Chino-E”), Bell Northern misses the crucial distinction: here, Bell Northern knows Huaqin's physical address, while there, Bell Northern had no working physical address for Chino-E. (Order Auth. Alt. Service, ECF No. 58.) The Hague Convention does not prohibit service by email when the defendant's physical address is unknown. See *Mycoskie, LLC v. 1688best*, No. 18-cv-60925, 2018 WL 4775643, at *1 (S.D. Fla. July 2, 2018) (Moore, J.). Service of process by email is generally acceptable where a defendant's physical address is completely unknown or where the plaintiff is dealing with “an international e-business scofflaw, playing hide-and-seek with the federal court.” *Rio Props. v. Rio Int'l Interlink*, 284 F.3d 1007, 1018 (9th Cir. 2002). Neither of those situations applies here. Instead, the Court finds that Bell Northern has not been diligent in seeking to either attempt proper service under the Hague Convention or seeking relief authorizing alternate service. Bell Northern's inability to complete service within the deadline established by the rules is of Bell Northern's own making.

Consequently, because the Plaintiff has not established good cause for its failure to serve, has failed to request an extension of time or provide good cause supporting such an extension, and has unnecessarily delayed in attempting to affect service of process under the Hague Convention or timely request alternate service, the Court **dismisses** this action **without prejudice** against Defendant Huaqin Co., Ltd. The Plaintiff's corrected motion for leave to effect alternate service (**ECF No. 73**) and the two prior-filed versions of the same motion (**ECF Nos. 70, 71**) are **denied as moot**. This case will remain **open** because the Plaintiff continues to assert claims against the other Defendants.

Done and ordered in Miami, Florida, on December 2, 2022.

A handwritten signature in blue ink, appearing to read 'R. N. Scola, Jr.', written over a horizontal line.

Robert N. Scola, Jr.
United States District Judge