

Plaintiff has identified an individual named Anthony Morales, who previously owned property located in Sumter, South Carolina. Plaintiff attempted to serve the Summons and Complaint on Morales at his Sumter address by certified mail, but discovered that Morales no longer resided in Sumter. Plaintiff then “googled” Morales, and found a website at www.tonymoralesmusic.com. According to the website, this Tony Morales lives in California and is “represented” by an agency called First Artists Management, located in Calabases, California. After telephoning the agency, Plaintiff alleges he received the name of Morales’ agent and the agency’s mailing address. Plaintiff then filed an Affidavit of Service with the court stating he served a Sabrina Hutchinson at First Artists Management with a copy of the Summons and Complaint via U.S. Postal Service.

The court finds service by mailing upon Sabrina Hutchinson is not valid service of process upon the Defendant, Tony Morales. First, the court is not convinced that Anthony Morales is the proper party to this lawsuit. Plaintiff alleges that an individual defamed him via Facebook. However, the individual who has identified himself as “Tony Morales” on Facebook may in actuality be absolutely anyone, as Facebook does not confirm an individual’s identity before he or she creates an account. Furthermore, there may be any number of individuals in the world with the name Tony Morales. Without further identifying information, this court fails to see how we could possibly verify that the Sumter Tony Morales defamed Plaintiff, or that the California Morales and Sumter Morales are one and the same. However, putting aside these obvious issues, along with the obvious jurisdictional issues where one out-of-state resident sues another out-of-state resident for allegations that occurred solely via Facebook, service on Hutchins does not comport with Rule 4(d), SCRPC. Under Rule 4(d), service upon an individual may be made by delivering a copy to him personally or leaving the complaint at his residence with some person of suitable age and discretion. Service may also be accomplished by delivering a copy to an “agent authorized by appointment or by law to receive service of process.”

Plaintiff argues there is a “fiduciary relationship” between Morales and Hutchinson, that Morales is a “principal in that business,” that Hutchinson is his “direct agent” and is entitled to receive service of process by the “apparent relationship” between the parties. The only evidence Plaintiff has to advance any of these theories is his review of Morales’ website and his alleged telephone conversation with the receptionist at First Artists Management. The court finds there is no evidence to support Plaintiff’s claim that Hutchinson is Morales’ agent for service of process and there is no legal authority to allow substitute service upon Hutchinson. To the extent that Plaintiff seeks an order of this court declaring the Affidavit of Service upon Hutchinson to be proper service, that motion is DENIED.

II. Motion for an Extension of Time to Serve Defendant

Under Rule 3(a), SCRPC and S.C. Code Ann. §15-3-20(B), a civil action is commenced when the summons and complaint are filed with the Clerk of Court if the summons and complaint are served within the statute of limitations, or if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing. Plaintiff seeks an enlargement of time beyond 120 days to serve the Defendant, presumably to toll the 2-year statute of limitations for his defamation causes of action. (Plaintiff

alleges the defamatory communications with Morales occurred on December 12, 2018. Complaint, Paragraph 20) Plaintiff's motion for an enlargement of time is DENIED.

The South Carolina Supreme Court has interpreted Rule 3 to require that when the complaint is filed, but not served, within the applicable statute of limitations, service must be made within 120 days of the filing of the complaint. *Mims v. Babcock Center, Inc.*, 399 S.C. 341, 346, 732 S.E.2d 395, 397-98 (2012). Plaintiff's Complaint was filed on December 11, 2020. According to Defendant's own letter to the court, the 2-year statute of limitations for defamation expired on December 12, 2020. See S.C. Code Ann. §15-3-550 (2-year statute of limitations for libel and slander). Therefore, service was required within 120 days of the filing date of December 11th, or by April 10, 2021. Service was not accomplished within that time, and the motion for an extension of time was not filed until April 12th. Furthermore, Plaintiff has failed to meet his burden of establishing any grounds for equitable tolling of the statute of limitations. See *Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr.*, 386 S.C. 108, 115, 687 S.E.2d 29, 32 (2009).

As to the remaining causes of action, Plaintiff must serve the proper defendant by the proper means within the applicable statute of limitations. All future filings with the court must comply with Rules 8 and 11, SCRCP. Any filing that runs afoul of these rules may give rise to sanctions, pursuant to Rule 11, SCRCP.

IT IS SO ORDERED.

Kristi F. Curtis, Circuit Court Judge

Sumter, South Carolina
May 12, 2021



Sumter Common Pleas

Case Caption: Gersh Zavodnik VS Tony Morales

Case Number: 2020CP4301819

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762