

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JASON L. NOHR, Receiver for	:	
MSC Holdings USA, LLC, MSC	:	
Holdings, Inc., and MSC GA	:	CIVIL ACTION NO.
Holdings, LLC,	:	1:14-CV-02761-SCJ
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
CORRINA JANG, et al.,	:	
	:	
Defendants.	:	

ORDER

This matter appears before the Court on Defendant Mei Ling Jang’s Motion to Dismiss for Insufficient Service of Process. Doc. No. [219]. For the following reasons, Defendant’s motion is **DENIED**.

Defendant claims that Plaintiff’s complaint should be dismissed because she was improperly served under the Federal Rules of Civil Procedure. The return of service for Defendant states that she was personally served at her residence in California on December 12, 2014. Doc. No. [115]. Defendant avers, however, that she was not personally served because the process server left “a stack of papers” on her front door step. Doc. No. [219], p. 4, 6. She also states that she did not intentionally attempt to evade service when she did not open the

door for the process server, and she was unaware someone was trying to serve her. Id. at p. 6. She allegedly did not answer the door because she is 74 years old, was alone that evening, does not “have a full grasp of the English language[,]” and did not understand what the process server was saying outside her door. Id. Finally, she claims that the stack of papers contained the complaint but not a copy of the summons. Id. at p. 2.

Federal Rule 4 outlines the proper form and method of service in a federal action. The rule states, in relevant part,

Unless federal law provides otherwise, an individual—other than a minor, an incompetent person, or a person whose waiver has been filed—may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or

(2) doing any of the following:

(A) delivering a copy of the summons and of the complaint to the individual personally;

(B) leaving a copy of each at the individual’s dwelling or usual place of abode with someone of suitable age and discretion who resides there; or

(C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

Fed. R. Civ. P. 4(e). In Georgia, where this district court is located, service may be made "to the defendant personally, or by leaving copies thereof at the defendant's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein." O.C.G.A. § 9-11-4(e)(7) (2012). "When a defendant in a lawsuit challenges the sufficiency of service, the defendant bears the burden of showing improper service. The return can only be set aside upon evidence which is not only clear and convincing, but the strongest of which the nature of the case will admit." D.C. Micro Dev., Inc. v. Lange, 259 Ga. App. 611, 612, 578 S.E.2d 251, 253 (2003) (internal quotations omitted). "It is the duty of a defendant to accept and submit to the service of process when [s]he is aware of the process server's purpose." Jacobson v. Garland, 227 Ga. App. 81, 83, 487 S.E.2d 640, 642 (1997) (internal quotations omitted). "It is generally held that if the process server and the defendant are within speaking distance of each other, and such action is taken as to convince a reasonable person that personal service is being attempted, service cannot be avoided by physically refusing to accept the summons. Id. (internal quotations omitted).

Defendant's account of the events surrounding service conflict with the process server's return of service. The process server states that he personally

served Defendant, but Defendant claims she did not open the door to be served and did not understand the server when he was apparently knocking on and speaking through the door. See Doc. No. [219], p. 6. To support her motion, Defendant includes her declaration, a photo of the stack of papers, a letter to Plaintiff asking for clarification, and other communications she sent to Plaintiff. Id.; see also Doc. No. [219-1]. All of this taken together, however, is insufficient to carry Defendant's heavy burden of proving insufficient service of process.

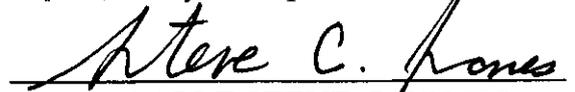
Based on her own account, she did not open the door for the process server, but they were within speaking distance of each other. Doc. Nos. [219], p. 6; [219-1], p. 3. Even though Defendant may not have fully understood the process server, she presents no evidence that he was not attempting to explain his purpose of personally serving her a complaint and summons. When she refused to open the door for the server, he had no other choice but to leave the complaint and summons on her front door step. Under Georgia law and the Federal Rules, this is appropriate service of process given the circumstances. See Jacobson, 227 Ga. App. at 83, 487 S.E.2d at 643. Finally, Defendant states that she was not provided a summons with the complaint left on her front door step. Doc. No. [219], p. 2. But this statement is not included in her sworn declaration, and

she provides no evidence causing the Court to question whether the process server delivered a copy of the summons with the complaint. The alleged picture of the stack of papers that she attached to her motion only shows the first page of the complaint, yet she admits that the stack contained at least two documents totaling at least 117 pages. Doc. No. [219-1], p. 3. Thus, Defendant fails to carry her burden of demonstrating a defect in service of process, and the Court will not dismiss this action against her under Federal Rule 12(b)(5).

CONCLUSION

Defendant's Motion to Dismiss for Insufficient Service of Process (Doc. No. [219]) is DENIED.

IT IS SO ORDERED, this 15th day of September, 2015.


HONORABLE STEVE C. JONES
UNITED STATES DISTRICT JUDGE