UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 92-5547

PACIFIC INTERNATIONAL INSURANCE COMPANY,

Plaintiff-Appellant,

VERSUS

WILLIAM T. JOHNSTON, et al.,

Defendants-Appellees.

Appeal from the United States District Court
For the Western District of Texas

SA 91 CV 714

March 26, 1993

Before WIENER, BARKSDALE, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Background

Appellant, Pacific International Insurance Company, filed suit on July 12, 1991, in the United States District Court for the Western District of Texas against William Johnston, Margaret Johnston, and Endicott-Sherwood, Inc. (as the alter ego of the Johnstons), on three promissory notes each in the amount of Fifty

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[*]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Thousand Dollars ($50,000.00). Three days after it filed suit, appellant mailed three summons with copies of the complaint to the Johnstons at their home in New Jersey. All three return receipt records were returned signed by William Satterthwaite, Mrs. Johnston's father. On July 22, 1991, an attorney for the Johnstons advised appellant by telephone that the Johnstons would not accept or acknowledge mail service. Realizing that under Rule 4 the Johnstons could properly refuse service by mail, appellant attempted personal service on them by a deputy sheriff in the county in New Jersey where their home is located. This summons was returned unserved, and the sheriff's department stated that they were unserved because the Johnstons had moved. Appellant then obtained additional summons and complaints and forwarded them to a private process server in New Jersey named Martin Smethy. Smethy claims that on August 20, 1991, he personally served the summons and complaints on a man standing at the door of the Johnston house whom he believed to be Mr. Johnston. The Johnstons dispute this with affidavit testimony that on the date in question they were out-of-town.

Appellant filed a motion for default judgment on September 17, 1991, assuming that it had properly effected service. In response, the Johnstons filed a motion to dismiss and a motion to quash service contending that they had not been served. Seeing that the Johnstons were going to challenge service, appellant again contacted Smethy and on October 10 Smethy again attempted personal service on the Johnstons. On December 3, 1991, the trial court

quashed the service of process which occurred on August 20 but found good cause to extend the time limit under Rule 4(j) in order to allow plaintiff to serve its complaint in accordance with the district court's order. The district court concluded its order with the following language:

> Plaintiff shall provide proof of proper service of its complaint on or before January 3, 1992. Failure to do so will result in dismissal of this cause without prejudice.

Thereafter appellant mailed summons to the Johnstons' counsel but the counsel claimed he was not authorized to accept service for them and this attempted service was quashed by the court. Appellant then again contacted Mr. Smethy who attempted service on the Johnstons at their home on January 3, 1992. Smethy claims that he saw a man through the window of the Johnstons' house but that he could never get anyone to come to the door and accept service of process and so he finally left the complaint and citation by the front door. On January 15, 1992, appellant filed a motion for service on the Johnstons to be deemed effective but the district court denied this motion, and instead granted the Johnstons' motion to quash the attempted service of January 3 and then dismissed appellant's suit under Rule 4(j) finding that "good cause has not been showed for counsel's failure to effect proper service." Appellant timely appeals this ruling.

Discussion

We review a trial judge's rulings on Rule 4(j) matters under an abuse of discretion standard. Wei v. State of Hawaii, 763 F.2d 370, 371 (9th Cir. 1985). As the district court found good cause

for the delay based on the occurrences predating its order of December 3, 1991, which granted Pacific 30 days within which to provide proof of proper service, we are concerned here only with what occurred SQ or did not occur SQ between December 3, 1991, and January 3, 1992.

Cases in this circuit have equated good cause with "excusable neglect" and have noted that "inadvertence or mistake of counsel or ignorance of the rules usually does not suffice" and that "some showing of good faith and a reasonable basis for noncompliance within the time specified" is necessary to show good cause. Winters v. Teledyne, 776 F.2d 1304 (5th Cir. 1985.) The district court in this case gave appellants an extension of time to effect the proper service of process and to file proof thereof on or before January 3, 1992, and warned that failure to do so by that date would result in dismissal without prejudice. Regretfully for appellant, it did not achieve valid service of process, much less file proof of such service, by the specified deadline.

We are not persuaded that the district court abused its discretion in dismissing the case without prejudice for failure to achieve service of process. See McDonald v. United States of America, 898 F.2d 466 (5th Cir. 1990).

We therefore AFFIRM the dismissal by the district court.