

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA,)	
)	
)	
Plaintiff,)	
)	Civil Action No.: 11-681 (BAH)
v.)	
)	
COMET DISTRIBUTION LTD.,)	
)	
Defendant.)	
_____)	

THE UNITED STATES’ RESPONSE TO SHOW CAUSE ORDER
AND MOTION FOR ORDER *NUNC PRO TUNC* TO EXTEND THE
TIME IN WHICH TO SERVE DEFENDANT

Background

On April 6, 2011, plaintiff, the United States of America (“United States”), brought this action seeking to recover monies mistakenly paid to defendant, Comet Distribution LTD. (“Comet”), under an agreement with the Smithsonian Institution. ECF No. 1. A summons was issued on that same date. *See* Docket Report. Since filing this suit, the United States has tried to serve Comet, through Monumental Process Servers, Inc., but, until recently, the United States was unable to locate Comet’s agent, Ms. Thibault, because she had moved. *See* Govt. Exh. 1. However, since the filing of this action, Mr. Samson, a general agent or officer of Comet, has exchanged e-mails with undersigned counsel about this litigation. *See* Govt. Exh. 2.

On November 8, the Court issued a Minute Order requiring the United States to show cause why this case should not be dismissed for failure to serve the defendant. On November 11, 2011, Comet was served through Ms. Thibault. *See* Govt. Exh. 3, *Affidavit of Robert Lehmann, Process Server*. The United States now files its response to the Court’s Show Cause Order and

requests that the Order be discharged. In addition, the United States moves for an order *nunc pro tunc* extending the time for service of process on the defendant.

ARGUMENT

I. LEGAL STANDARDS

Rule 4(m) of the Federal Rules of Civil Procedure provides:

If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m). Local Civil Rule 83.23 provides:

A dismissal for failure to prosecute may be ordered by the Court upon motion by an adverse party, or upon the Court's own motion. An order dismissing a claim for failure to prosecute shall specify that the dismissal is without prejudice, unless the Court determines that the delay in prosecution of the claim has resulted in prejudice to an opposing party.

A plaintiff seeking a good cause extension has the burden to show good cause. *See Mann v.*

Castiel, 729 F.Supp.2d 191, 194 (D.D.C. 2010); *Strong-Fischer v. Peters*, 554 F.Supp.2d 19, 23 (D.D.C. 2008).

II. THE UNITED STATES HAS SHOWN GOOD CAUSE WHY THIS CASE SHOULD NOT BE DISMISSED

As shown by the affidavit filed herewith, Comet has now been served. *See* Govt. Exh. 3. Furthermore, Mr. Samson, a general agent or officer of Comet was aware of this litigation and had discussed resolving this suit. *See* Govt. Exh. 2. Thus, although Comet had not been formally served with the complaint, it had notice of the suit and its basis and is, therefore, not prejudiced in any way by the extension requested herein. Moreover, since the filing of this

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ORDER

UPON CONSIDERATION OF the United States’ response to the Court’s Show Cause Order dated November 8, 2011, the United States’ motion for an order *nunc pro tunc* extending the time in which to serve the defendant, and the entire record in this case, it is this ____ day of _____, 2011,

ORDERED, that the Court’s Show Cause Order is discharged, and it is

FURTHER ORDERED, that the United States’ motion for an order *nunc pro tunc* extending the time in which to serve the defendant is granted.

UNITED STATES DISTRICT JUDGE