UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 08-CV-80119-MARRA/JOHNSON

JANE DOE NO. 2,

Plaintiff,

vs.

JEFFREY EPSTEIN,

Defendant.
_____/

REPLY MEMORANDUM IN SUPPORT OF MOTION FOR ORDER COMPELLING CLERK TO ENTER DEFAULT

Plaintiff, Jane Doe No. 2, by and through her undersigned counsel, submits this Reply Memorandum in Support of Motion for Order Compelling Clerk to Enter Default, as follows:

Introduction

Defendant Jeffrey Epstein claims that service of process on him was ineffective under Florida or Federal law, based solely on a "bare bones" affidavit that raises more questions than it answers. At a minimum, the issue of whether service was effective under Florida or Federal law is at this point one of fact which should be the subject of discovery.[1]

The Affidavit Attached to the Defendant's Response to the Motion is Insufficient

Service of process was effected at Jeffrey Epstein's New York residence on May 7, 2008, at 7:45 a.m. by handing a copy of the Summons and Complaint to a person in Defendant's residence who refused to identify himself. (See D.E. 4, Affidavit of Service). Defendant now attaches to his

[1] The Plaintiff's Motion also requests in the alternative an enlargement of time to serve the Summons and Complaint. Because the Defendant has now appeared in the case without seeking to quash service, that portion of the Motion is moot.

response as Exhibit "A" the Affidavit of Richard Barnett, who claims to have received the copies of the Summons and Complaint on May 7, 2008 at Defendant Epstein's residence. In this Affidavit, Mr. Barnett states very little. He asserts that he does not now, nor has he ever, resided at 9 E. 71st Street, New York, New York (Mr. Epstein's residence). He fails to state in this Affidavit, however, where he does live, if not at the residence in question; what he was doing at the subject address when service was made; his relationship with Defendant Epstein, and how often he was at the residence; or why he refused to identify himself to the process server. He also fails to state who instructed him to answer the door on May 7, 2008 and take service anonymously.

The Court may grant limited discovery on the issue of service of process. Commonwealth of Puerto Rico v. SS Zoe Colocotroni, 61 F.R.D. 653, 656-57 (D.P.R. 1974) ("discovery regarding the legal sufficiency of service of process so as to acquire *in personam* jurisdiction over the person of a defendant is permitted by the Federal Rules of Civil Procedure, specifically Rule 26"). See also Blair v. City of Worcester, 522 F.3d 105, 111 (1st Cir. 2008); Monteiro v. San Nicolas, S.A., 254 F.2d 514, 516-17 (2d Cir. 1958) (holding that discovery was appropriate on disputed issues of service of process). The parties do not dispute that if the person who in fact received the copies of the summons and complaint resided at the residence, then service would have been valid under Florida or Federal law on May 7, 2008.[2] See National Development Co. v. Triad Holding Corp., 930 F.2d 253 (2d Cir. 1991) (upholding service of process on housekeeper of defendant's New York

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[2] Defendant notes that under Rule 4(e) there is no priority between alternative methods of service. This means that Plaintiff has the option of perfecting service under either federal law, the law of the forum state, or the law of the state where service is made: "Either may be turned to with no attempted prior resort to the other." Fed.R.Civ.P. 4 (Commentary C4-22). It does not stand, however, for the proposition that *the defendant* can accept service under New York law, while ignoring valid service under Florida or Federal law. Accordingly, once valid service was made on Defendant Epstein under Federal or Florida law on May 7, 2008, Defendant was required to answer

apartment, under Fed.R.Civ.P. 4(d)(1) [now 4(e)(2)], because the defendant was actually living in the apartment at the time service was effected). Alternatively, if the extraordinary difficulties encountered in serving Mr. Epstein were the result of Mr. Epstein's deliberate avoidance or deception, while knowing of the lawsuit, then it would likewise be appropriate to find good service and a default. See Frank Keevan & Son , Inc. v. Callier Pipe & Tube, Inc., 107 F.R.C. 665, 671-72 (S.D. Fl.a. 1985) ("[e]ffective service is most likely found when a defendant has engaged in deception to avoid service of process"). Based on what Mr. Barnett's Affidavit does *not* disclose, Plaintiff should be granted discovery to determine whether service was proper under Florida or Federal law. Plaintiff would at a minimum like to take the depositions of Mr. Barnett and Mr. Epstein with regard to the service of process issues that have arisen in this matter.

Conclusion

Based on the foregoing, Plaintiff requests that this Court allow Plaintiff to take discovery on the issue of service of process; conduct an evidentiary hearing on the validity of service under Florida or Federal law; enter an Order compelling the Clerk to enter a default against Defendant Epstein pursuant to Fed.R.Civ.P. 55(a); and such other and further relief as this Court deems proper.

Dated: June 24, 2008.

Respectfully submitted,

By: s/ Jeffrey M. Herman .

Jeffrey M. Herman (FL Bar No. 521647)
jherman@hermanlaw.com
Stuart S. Mermelstein (FL Bar No. 947245)
ssm@hermanlaw.com
Adam D. Horowitz (FL Bar No. 376980)
ahorowitz@hermanlaw.com
HERMAN & MERMELSTEIN, P.A.
Attorneys for Plaintiffs Jane Doe
18205 Biscayne Blvd., Suite 2218

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to otherwise respond to the Complaint by May 27, 2008 to avoid default, which he failed to do.

Miami, Florida 33160
Tel: 305-931-2200
Fax: 305-931-0877

CERTIFICATE OF SERVICE

I hereby certify that on June 24, 2008, I electronically filed the foregoing document with the Clerk of the Court using CM/ECF. I also certify that the foregoing document is being served this day to all parties on the attached Service List in the manner specified, either via transmission of Notices of Electronic Filing generated by CM/ECF or in some other authorized manner for those parties who are not authorized to receive electronically Notices of Electronic Filing.

/s/ Jeffrey M. Herman .

SERVICE LIST
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United States District Court, Southern District of Florida

Jack Alan Goldberger
jagesq@bellsouth.net

/s/ Jeffery M. Herman