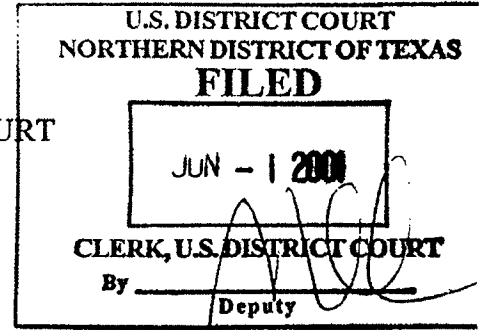


ORIGINAL

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
DALLAS DIVISION



MICHAEL J. QUILLING, as Receiver §  
for Hammersmith Trust, LLC, Hammersmith §  
Trust, Ltd., Microfund, LLC, and §  
Bridgeport Alliance, LLC §

Plaintiff, §

VS. §

ADAM SHAW, ET AL. §

Defendants. §

NO. 3-00-CV-1405-M



MEMORANDUM ORDER

Michael J. Quilling, as Receiver for Hammersmith Trust, LLC and related entities, has filed a motion to compel certain defendants to pay costs incurred in effecting service of process pursuant to Rule 4(d) of the Federal Rules of Civil Procedure. The Receiver alleges that Leon Hurst, Greg Skibbee and United Holdings Corp., Thomas McCrimmon and Chatham International, Inc., and Jeffrey Matz "intentionally and without good cause refused to waive service of process in this case." (Rec. Mot. ¶ 3). These defendants have now been served, and the Receiver seeks to recover the costs of service of follows:

Leon Hurst	\$ 2,179.00
Gregory Skibbee and United Holdings Corp., jointly and severally	\$ 1,565.00
Thomas McCrimmon and Chatham International, Inc., jointly and severally	\$ 1,495.00
Jeffrey Matz	\$ 1,267.50

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A hearing was held on June 1, 2001. The Receiver was represented by Kenneth A. Hill, one of his attorneys. Gregory Skibbee and United Holdings Corp. appeared by and through their counsel of record, Marcie Y. Florez. Donald J. Christie, attorney for Leon Hurst, filed a response in opposition to the motion but did not appear at the hearing.<sup>1</sup> Thomas McCrimmon, Chatham International, Inc., and Jeffrey Matz wholly failed to respond to the motion. After considering the evidence and argument of counsel, the Court determines that the Receiver's motion should be granted in part and denied in part.

Rule 4(d) provides, in relevant part:

If a defendant located within the United States fails to comply with a request for waiver made by a plaintiff located within the United States, the court shall impose the costs subsequently incurred in effecting service on the defendant unless good cause for the failure is shown.

FED. R. CIV. P. 4(d). The purpose of this rule is to eliminate the costs of service of a summons on certain parties and to foster cooperation among adversaries and counsel. FED. R. CIV. P. 4, adv. comm. notes. However, costs may not be imposed for refusal to waive service unless the defendant is "located within the United States." FED. R. CIV. P. 4(d). Moreover, the plaintiff must properly comply with the requirements of Rule 4(d)(2) as a condition precedent to a demand for costs. *Spivey v. Board of Church Extension and Home Mission of the Church of God*, 160 F.R.D. 660, 663 (M.D. Fla. 1995). Among these requirements are "inform[ing] the defendant, by means of a text prescribed in an official form promulgated pursuant to Rule 84, of the consequences of compliance and of a failure to comply with the request." FED. R. CIV. P. 4(d)(2)(D).

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<sup>1</sup> Christie, who resides in Las Vegas, Nevada, declined to appear at the hearing because "the cost of travel to Dallas exceeds the amount [sought by the Receiver]." (Christie Ltr., 5/29/01).

The evidence shows that Leon Hust was not "located within the United States" at the time the Notice of Lawsuit and Request for Waiver of Service of Summons was sent to him by the Receiver. Rather, Hust was living in Sao Paulo, Brazil with his wife and ailing son from late August 2000 until early May 2001. (Hurst Aff. ¶¶ 2-3). Therefore, the cost provisions of Rule 4(d) do not apply to this defendant.

Nor can costs be assessed against Gregory Skibbee and United Holdings Corp. under this rule. These defendants point out, and the Receiver acknowledges, that the waiver form does not contain language advising them of the consequences of failing to comply with the request for waiver of service. (Skibbee Resp., Exh. E at 23-26). This defect is fatal to a motion for costs. *See Spivey*, 160 F.R.D. at 663.

The Court reaches a different conclusion with respect to Thomas McCrimmon, Chatham International, Inc., and Jeffrey Matz. None of these defendants have responded to the motion or controverted the allegations made by the Receiver. As a result, the Court finds that McCrimmon, Chatham International, and Matz have failed to establish good cause for failing to comply with the request for waiver of service.

#### CONCLUSION

The Receiver's motion to compel payment of costs incurred in effecting service of process is granted in part and denied in part. The motion is granted with respect to Defendants Thomas McCrimmon, Chatham International, Inc., and Jeffrey Matz. The following costs are hereby imposed against these defendants as a result of their failure to comply with a request for waiver of service:

Thomas McCrimmon and Chatham International, Inc., jointly and severally	\$ 1,495.00
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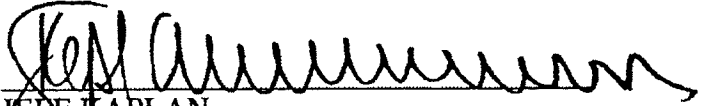
Jeffrey Matz

\$ 1,267.50

In all other respects, the Receiver's motion is denied.

SO ORDERED.

DATED: June 1, 2001.

  
JEFE KAPLAN  
UNITED STATES MAGISTRATE JUDGE