



George H. Kalberer v. Star Tribune and Teamsters Local 120

2012 | Cited 0 times | D. Minnesota | June 1, 2012

ORDER

In this action, Plaintiff George H. Kalberer has sued his former employer (the Star Tribune newspaper) and his union (Teamsters Local 120), asserting that he was discriminated against and ultimately fired on account of his age. Kalberer's application to proceed in forma pauperis was granted by Magistrate Judge Mayeron on April 3, 2012, and he was then provided with forms to enable the United States Marshal's Service to effect service of process.

On May 14, 2012, Kalberer moved for a default judgment against Teamsters Local 120 (Doc. No. 13). The Court denied that request on May 30, 2012, because Kalberer had not filed valid proof that the union had been served with process. (See Doc. No. 16.) The denial was "without prejudice to being renewed upon a proper showing of service of process on Teamsters Local 120." (Id.)

On May 31, 2012, Kalberer once again asked the Court to enter the union's default. (Doc. No. 21.) This time, he asserted that the union was validly served with process "on or about" April 16, 2012. (Id.) In support, he pointed to a Marshal's Service form entitled "Process Receipt and Return," filed in the record as Docket Number 17. The form, however, does not support Kalberer's request.

First, nothing on the form indicates that the union was served on April 16, 2012. Rather, it indicates that the union was mailed a copy of Marshal's Service form 299 -- a request for waiver of service -- on April 13, 2012. (Doc. No. 17 at 3.) There is no evidence in the record that the union returned this request for waiver of service. As a result, service was not accomplished through this mailing. See Fed. R. Civ. P. 4(d), 4(e)(1); Minn. R. Civ. P. 4.05; Yang v. Rosenbaum, Civ. No. 09-3190, 2010 WL 1508920, at *2-3 (D. Minn. Apr. 14, 2010).

The Marshal's Service obviously recognized this fact, as the Process Receipt and Return form indicates that the summons and complaint were personally delivered to the union (specifically, to "Sharon Lubinski -- admin") on May 30, 2012. (Doc. No. 17 at 3.) In other words, service was not effected until, at the earliest, May 30, 2012. As a result, the union is not currently in default. See Fed. R. Civ. P. 12(a)-(b) (defendant has 21 days following service of process to answer or move to dismiss).

Based on the foregoing, and all the files, records, and proceedings herein, IT IS ORDERED that Kalberer's Application for Entry of Default (Doc. No. 21) is DENIED.

Richard H. Kyle

