

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

Dr. ORLY TAITZ, Esq.,

Plaintiff,

v.

PATRICK DONAHOE,  
Postmaster General, *et. al.*,

Defendants.

Civil Action No.: 13-1020 (RCL)

**REPLY**

Defendants, by undersigned counsel and pursuant to LCvR 7(d), hereby reply to Plaintiff's *Opposition to Request for Stay; Motion to Expedite Default/Summary Judgment; Motion Seeking Postjudgment Discovery and Deposition of a Clerk for Justice Department Eddy Hase, as well as a Request for this Court to seek an Independent Counsel, similar to a Precedent Apps et al. v Clinton 813 F Supp (DDC 1993)* [ECF Document 7]. Although the restoration of appropriations to the Department of Justice has rendered Defendants' request for a stay moot, Defendants' companion requests that (1) the Court set a due date for Defendants' response to the Complaint to a date 30 days after the restoration of appropriations, and (2) deny without prejudice Plaintiff's Motion for Summary Judgment/Default Judgment [ECF Document 4], remain in dispute. *See* Notice Regarding Service of Complaint [ECF Document 6].

The basis for the latter two requests was failure of service of process. *Cf.* Fed. R. Civ. P. 12(b)(5). In particular, although the service package for this case was evidently delivered to the Department of Justice mailroom, it was never received by the Civil Division at the United States Attorney's Office and so never reached a civil process clerk at that Office. Accordingly, service

of the summons and complaint has never been perfected pursuant to Fed. R. Civ. P.

4(i)(1)(A)(ii), which in turn means that the 30-day period for Defendants to answer or otherwise respond to Plaintiff's complaint pursuant to 5 U.S.C. § 552(a)(4)(C) has not yet begun to run.

*See Morse v. Elmira Country Club*, 752 F.2d 35, 42 (2d Cir. 1984) (noting that "service was effective where the recipient received the mail and accordingly obtained actual notice"). Indeed, as the Supreme Court has pointed out, service of process "is fundamental to *any* procedural imposition on a named defendant." *Murphy Brothers, Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 347 (1999) (emphasis added).

Plaintiff opposes Defendants' requests because the stamped signature that appears on the return receipt for the service package "is identical to the signature of the same clerk, Eddy Hase, on other certified mail receipts for pleadings and summons received by the department of Justice." *See* ECF Document 7 at p. 4. Plaintiff's argument misses the point. At most, the stamped signature of Mr. Hase could confirm that the service package was received at the Department of Justice mailroom, which Defendants have not disputed. For service to be effective, however, the service package must be received by a civil process clerk at the United States Attorney's Office, and no one named "Eddy Hase," or having a similar name, has held such a position at any time relevant to this case. *See* Second Declaration of Daniel F. Van Horn, attached as Exhibit 1. Consequently, Plaintiff's contention that Mr. Hase's stamped signature on the return receipt demonstrates effective service of process is without merit.

Because Defendants have never been properly served, they cannot be subjected to "any procedural imposition" in this case, which in turn mandates the denial or dismissal of Plaintiff's Motion for Summary Judgment/Default Judgment as well as the other motions Plaintiff has combined with her opposition to Defendants' request for a stay.

In order to avoid further delay and the administrative inconvenience of requiring Plaintiff to re-serve the summons and complaint, Defendants have agreed to forego formal service of process and treat the summons and complaint as having been served on the date on which appropriations were restored to the Department of Justice, thereby making the due date for Defendants' response 30 days later. Appropriations to the Department of Justice were restored on October 17, 2013, and 30 days thereafter falls on Saturday, November 16, 2013. Therefore, Defendants request that the Court set Monday, November 18, 2013, as the due date for their response to Plaintiff's complaint. *See* Fed. R. Civ. P. 6(a)(1)(C).

Respectfully submitted,

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for the District of Columbia

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