

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

NEW DISCOVERY CREDIT UNION

_____/ **Plaintiff**

vs.

FLORENCE HAYES

_____/ **Defendant**

CASE NO. 15-CV-14065

MOTION TO QUASH SERVICE OF PROCESS

Defendant Florence Hayes (Hereinafter “Defendant”), respectfully moves this Court to quash the service of process purportedly served on her and to order an evidentiary hearing pursuant to Florida Statute 48.161. The grounds for this motion are as follows:

FACTS

1. New Discovery Credit Union (hereinafter Plaintiff), filed this suit on January 20th, 2015 alleging that the Defendant failed to repay a personal loan.
2. Though the complaint alleged that Plaintiff’s business was located in Leon County, Florida.
3. The complaint made no allegations as to Defendant’s residence.
4. The Plaintiff attempted to serve the Defendant by way of the Leon County Sheriff at Defendant’s previous address in Leon county on February 3, 2015 but failed.
5. The Plaintiff attempted service again on February 4, and 5 of 2015. These two attempts also failed.
6. On March 3, the Plaintiff published constructive service in the Local Journal Newspaper

a weekly newspaper on March 9 and 16, 2015.

7. The Plaintiff filed three returns of service, all of them simply stating that service was not perfected.

8. The Plaintiff did not pursue any of the other ways to perfect service or locate Defendant, including publication by mail and a web search.

9. The Plaintiff did not produce a return receipt for certified mail signed by the Defendant.

ARGUMENT

10. Regarding substituted service of process, Florida Statute 48.16 provides in part:

..Notice of service and a copy of the process shall be sent forthwith by registered or certified mail by the plaintiff or his or her attorney to the defendant, and the defendant's return receipt and the affidavit of the plaintiff or his or her attorney of compliance shall be filed on or before the return day of the process or within such time as the court allows..”

11. Under section 48.161, the plaintiff must serve the Secretary of State and mail a copy of the summons and complaint to the defendant by registered or certified mail. See *Wise v. Warner*, 932 So.2d 591, 593-94 (Fla. 5th DCA 2006) (holding that substitute service was not perfected where "the record reflects no attempt by Warner to serve Wise by registered or certified mail"). See also, *Turcotte v. Graves*, 374 So.2d 641, 643 (Fla. 4th DCA 1979).

12. However, where the failure of delivery of process was not caused by the defendant's rejection of the mail and where such failure might have resulted from a cause not chargeable to the defendant, then the statutory requirements have not been met and service of process is insufficient.

13. The Plaintiff failed to strictly adhere to proper pleading and notice requirements

necessary to perfect substitute service upon the Defendant. This failure is attributed to the Plaintiff, not the Defendant.

14. A defendant "must be able to demonstrate the invalidity of the service of process by clear and convincing evidence before the motion to quash could be granted." *Travelers Ins. Co. v. Davis*, 371 So.2d 702, 703 (Fla. 3d DCA 1979) (holding that the lower court erred in not granting movant an evidentiary hearing on a motion to quash service of process).

15. The Court in *. Slomowitz v. Walker*, 429 So.2d. defined clear and convincing evidence as follows: " The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

16. The Plaintiff did not produce a return receipt for certified mail signed by the Defendant. Had Plaintiff possessed such return receipt, he would have attached it to the complaint. The failure to do so is clear and convincing evidence that a document required by Florida Statute 48.16 to perfect service is missing.

17. Under these circumstances, the Defendant is entitled to an evidentiary hearing. A motion to quash service of process entitles the movant to a full evidentiary hearing. *Linville v. Home Sav. of Am., FSB*, 629 So.2d 295, 295-96 (Fla. 4th DCA 1993)

WHEREFORE, the Defendant respectfully requests that this court enter an order quashing service of process and/or order an evidentiary hearing on the matter.

Respectfully submitted on April 17, 2021,



Florence Hayes
4867 Marigold St
Tallahassee, Florida 32308
florence.hayes4@gmail.com
(850) 731-9845

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

NEW DISCOVERY CREDIT UNION

_____/ **Plaintiff**

vs.

FLORENCE HAYES

_____/ **Defendant**

CASE NO. 15-CV-14065

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that a true and correct copy of the foregoing has been furnished by Hand Delivery on April 17, 2021 to the following:

- Amman Masson, 3869 Capital Dr, Ste 555, Tallahassee, Florida 32312, Attorney for New Discovery Credit Union



Florence Hayes
4867 Marigold St
Tallahassee, Florida 32308
florence.hayes4@gmail.com
(850) 731-9845