

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

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|-----------------------|---|----------------------|
| MARVIN HOLMES, |) | |
| |) | |
| Plaintiff, |) | |
| v. |) | |
| |) | |
| CONNECTIONS COMMUNITY |) | C.A. No. N15C-07-027 |
| SUPPORT |) | |
| PROGRAM/CONNECTIONS, |) | |
| |) | |
| Defendant. |) | |
| |) | |
| |) | |
| |) | |
| |) | |

Submitted: September 9, 2015
Decided: November 2, 2015

Upon Defendant's Motion to Dismiss
DENIED

MEMORANDUM OPINION

Marvin Holmes, *Pro Se*

Dana Spring Monzo, Esquire, White and Williams LLP, Attorney for Defendant

JOHNSTON, J.

FACTUAL AND PROCEDURAL CONTEXT

This litigation arises from allegations by Plaintiff Marvin Holmes (“Holmes”) against Defendant Connections Community Support Program, Inc. (“Connections”). Holmes was arrested on July 31, 2012, for violating the terms of his probation. On July 9, 2015, Holmes filed suit in this Court alleging that Connections was medically negligent in the health care it provided to Holmes and that Connections had violated his civil rights. On August 6, 2015, a sheriff’s return was filed indicating that Connections was served on August 4, 2015.

On August 24, 2015, Connections filed a Motion to Dismiss pursuant to Superior Court Civil Rules 12(b)(4), 12(b)(5) and 4(f)(1)(III).

ANALYSIS

The sole basis of Connections’ motion is Holmes’ failure to effectuate process and service of process of the Summons and Complaint. Delaware Superior Court Civil Rule 4(f)(1)(III) provides that service shall be made:

[u]pon a domestic or foreign corporation or upon a partnership or unincorporated association which is subject to suit under common name by delivering copies of the summons, complaint and affidavit, if any, to an officer, a managing or general agent or to any other agent authorized by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.¹

¹ Super. Ct. Civ. R. 4(f)(1)(III).

The Court has held that “the return of service upon a defendant corporation is *prima facie* evidence of the facts stated therein, and that strong and convincing proof is required to rebut the presumption of the veracity of the return.”² In *Paras*, the Court considered whether a receptionist had any authority to accept service of process on behalf of the corporate defendant. The Court found that the record was devoid of any indication that the corporation had knowingly or negligently permitted the receptionist to “exercise authority to accept service.”³ Additionally, an affidavit executed by a corporate representative explicitly denied the granting of such authority.⁴ The Court held that the receptionist did not have **any** authority to accept service, and dismissed plaintiff’s complaint.⁵

In this case, the record indicates that service of Holmes’ complaint was made on the receptionist. Therefore, the Court’s inquiry is limited to whether the receptionist had authority to accept service on behalf of Connections.

The Court finds that the receptionist has no actual authority to accept service. An affidavit submitted by the General Counsel for Connections states that the receptionist is an employee and “not an officer, managing or general agent of [Connections].” The affidavit also states that the receptionist is not “authorized by law to accept service of process on behalf of [Connections].”

² *Paras v. Corr. Med. Servs.*, 2002 WL 31260071, at *3 (Del. Super.) (citing *Cohen v. Brandywine Raceway Ass’n*, 238 A.2d 320, 324 (Del.1968)).

³ *Paras*, 2002 WL 31260071, at *3.

⁴ *Id.* at *1.

⁵ *Id.* at *2.

In the absence of actual authority, the Court must consider whether the receptionist had apparent authority to accept service. Apparent authority is defined as “that authority which, though not actually granted, the principal knowingly or negligently permits the ‘agent’ to exercise or which... [the principal] holds... [the ‘agent’] out as possessing.”⁶ There is no evidence that Connections knowingly or negligently permitted the receptionist to accept service of process on its behalf.

The Court finds that for Holmes to have effectuated process and service of process of the Summons and Complaint on Connections, the Praecipe should have stated that service must be made upon an officer, managing or general agent, or registered agent of Connections.⁷

CONCLUSION

Connections has demonstrated good grounds for the Court to grant its Motion to Dismiss. However, in the interest of judicial economy, the Court declines to dismiss this action. Instead, Holmes shall have the opportunity to amend the Praecipe to properly effectuate process and service of process of the Summons and a Complaint on an officer, managing or general agent, or registered agent of Connections.

⁶ *Id.* at *3 (citing *Finnegan Constr. Co. v. Robin-Ladd Co.*, 354 A.2d 142, 144 (Del. Super.)).

⁷ Super. Ct. Civ. R. 4(f)(1)(III).

THEREFORE, Defendants Motion to Dismiss is hereby **DENIED**
WITHOUT PREJUDICE to refile the Motion to Dismiss should Holmes fail to
properly effectuate service of process.

IT IS SO ORDERED.

/s/ Mary M. Johnston
The Honorable Mary M. Johnston