

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

KOZMA INVESTMENTOS, LTDA, a
foreign corporation

Plaintiff,

v.

Case No: 2:17-cv-306-FtM-99CM

EDSON PEREIRA DUDA,
NATALINA SACCHI DUDA and
GEBY INVESTMENTS, LLC,

Defendants.

ORDER

This matter comes before the Court upon review of Plaintiff's Response to the Court's Order Requiring Service on the Dudas On or Before November 13, 2017 and Motion for Extension of Time (Doc. 47) filed on November 13, 2017.

On June 5, 2017 this case was removed from the Twentieth Judicial Circuit Court in and for Collier County, Florida to this Court. Doc. 1. Plaintiff's amended complaint alleges that Defendants fraudulently transferred assets in order to avoid an arbitration award. Doc. 33 ¶ 1. On September 6, 2017 the Court issued an Order to Show Cause when Plaintiff failed to serve the Summons and Complaint in accordance with Rule 4(m) of the Federal Rules of Civil Procedure. Doc. 40. Plaintiffs replied the same day, notifying the Court that Defendants Edson Pereira Duda and Natalina Sacchi Duda (collectively, "the Dudas") reside in Brazil, and thus, the deadlines for service in Rule 4(m) are inapplicable. Doc. 41 ¶ 5. Plaintiff stated that it anticipated service would be completed within 30 days. *Id.* ¶ 7. Based on

Plaintiff's response, the Court issued an Order taking no further action on the Court's Order to Show Cause (Doc. 40). Doc. 42.

When Plaintiff did not serve the Dudas with process by the expiration of the thirty days, the Court issued another Order to Show Cause. Doc. 46. In its Order, the Court acknowledged that the time limits for service of process set forth in Rule 4(m) of the Federal Rules of Civil Procedure do not apply to service on a party in a foreign country. Doc. 46 at 2. Nonetheless, the Court reminded Plaintiff that due diligence is required and gave Plaintiff until November 13, 2017 to serve process on the Dudas. *Id.* at 2-3. The Court further stated that Plaintiff would be required to show diligent efforts towards service in any request for extension. *Id.* at 3.

Since that time, Plaintiff has diligently attempted to serve process on the Dudas. *See generally*, Doc. 47. Plaintiff's Motion for Extension indicates that it has attempted to serve process on the Dudas no less than nine times. *See* Doc. 47 at 11-12. Each time, the doorman at the Dudas' apartment building has indicated that the Dudas were not at the apartment. *Id.* Accordingly, Plaintiff requests an extension of time to serve process on the Dudas, or in the alternative, an order requiring Defendants' counsel to accept service on behalf of the Dudas. Doc. 47 at 3.

Because the Court finds that Plaintiff has made diligent efforts to serve the Dudas with process, the Court will grant Plaintiff an additional thirty days in which to serve process on the Dudas, or to seek an additional extension. The Court will deny without prejudice Plaintiff's request for the Court to issue an Order requiring defense counsel to accept process of service on behalf of the Dudas. Should Plaintiff

be unsuccessful in serving Plaintiff within the thirty day extension, it may renew its request and provide the Court with a memorandum of law discussing the Court's authority to issue such an order under The Hague Convention and/or the Brazilian Code of Civil Procedure. *See* Fed. R. Civ. Pro. 4(f) (authorizing service of process outside of the United States "by any internationally agreed means of service that is reasonably calculated to give notice, such as those authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents," or "as prescribed by the foreign country's law for service in that country in an action in its courts of general jurisdiction.").

ACCORDINGLY, it is hereby

ORDERED:

Plaintiff's Response to the Court's Order Requiring Service on the Dudas On or Before November 13, 2017 and Motion for Extension of Time (Doc. 47) is **GRANTED**. Plaintiff shall have up to and including **December 18, 2017** to serve process on the Dudas.

DONE and **ORDERED** in Fort Myers, Florida on this 16th day of November, 2017.


CAROL MIRANDO
United States Magistrate Judge

Copies:
Counsel of record