

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

AMERISURE MUTUAL
INSURANCE COMPANY,

Plaintiff,

v.

Case No. 8:18-cv-2878-T-24 AAS

COMMERCIAL POOL CLEANERS,
INC., ET AL.,

Defendants.

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ORDER

This cause comes before the Court on Defendant Belkys Garcia Dominguez's Motion to Dismiss. (Doc. No. 16). Plaintiff opposes the motion. (Doc. No. 17). As explained below, the motion is denied.

Plaintiff filed its complaint for declaratory relief on November 26, 2018 against two Defendants—Commercial Pool Cleaners, Inc. and Belkys Garcia Dominguez. (Doc. No. 1). On March 6, 2019, the Court issued an endorsed directing Plaintiff “to either (1) show cause by a written response filed on or before 3/13/19 for failing to perfect service within 90 days after filing the complaint, or (2) file proof of service by 3/13/19.” (Doc. No. 7). In response, on March 12, 2019, Plaintiff filed proof of service on both Defendants. (Doc. No. 9, 10). With regard to Dominguez, the affidavit of service showed that Plaintiff served Dominguez on March 11, 2019. (Doc. No. 10).

On March 29, 2019, Dominguez filed the instant motion, in which she argues that Plaintiff's claims against her should be dismissed, because Plaintiff did not serve her within 90

days after filing the complaint—by February 25, 2019. Dominguez argues that Federal Rule of Civil Procedure 4(m) requires the Court to dismiss Plaintiff’s claims against her without prejudice due to Plaintiff’s failure to serve her within 90 days.

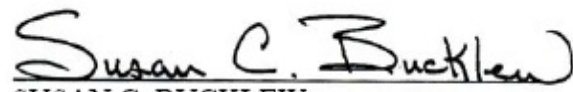
Rule 4(m) provides the following: “If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” Plaintiff argues that the Court’s March 6, 2019 order directed that Plaintiff serve Defendants and file proof of service by March 13, 2019, and because Plaintiff complied, the Court is not required to dismiss Plaintiff’s claims against Dominguez.

The Court agrees with Plaintiff—the Court’s March 6, 2019 order required that service be made by March 13, 2019. Because Plaintiff served Dominguez on March 11, 2019, its claims against Dominguez will not be dismissed.

Accordingly, it is ORDERED AND ADJUDGED that:

- (1) Defendant Belkys Garcia Dominguez’s Motion to Dismiss (Doc. No. 16) is **DENIED.**
- (2) Defendant Belkys Garcia Dominguez must file a response to the complaint by ***May 3, 2019.***

DONE AND ORDERED at Tampa, Florida, this 16th day of April, 2019.


SUSAN C. BUCKLEW
United States District Judge

Copies to:
Counsel of Record