

**UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT**

LINDA MCNEILL,	:	
Plaintiff,	:	
	:	CIVIL ACTION NO.
v.	:	3:03cv1199 (SRU)
	:	
FUTURES INTERNATIONAL UK, INC.,	:	
Defendant.	:	
	:	

**RULING ON MOTION TO DISMISS**

Linda McNeill (“McNeill”) filed suit against Futures International UK, Inc. (“Futures”) on July 10, 2003, after receiving a right to sue letter from the Equal Employment Opportunity Commission. Shortly thereafter, McNeill attempted to serve Thomas J. Drew who was listed on the Connecticut Secretary of State’s website as Future’s agent for service of process. McNeill was informed that service was not possible because Futures no longer existed, having been sold to the Whitney Group, Inc. McNeill then amended her complaint, as of right, to name the Whitney Group, Inc. as defendant, rather than Futures. The Whitney Group, Inc. was served by mail, on August 13, 2003.

Counsel for Futures became aware of the complaint – presumably when it was served on The Whitney Group, Inc. – and informed McNeill’s counsel, on October 16, 2003, that Futures had not been sold and that the name of its agent for service of process was on the Secretary of State’s website. McNeill’s attorney responded that they had previously attempted to serve Mr. Drew, the agent listed on the website, without success. On October 29, 2003, Futures’ counsel informed McNeill’s counsel that Richard Stein, not Mr. Drew, was the correct agent for service of process. McNeill than moved for permission to amend her complaint (because she had already amended once as of right). The

motion was granted on November 5, 2003, and Richard Stein was served with the amended complaint on December 20, 2003 – 151 days after the filing of the initial complaint.

Futures now moves to dismiss the complaint pursuant to Federal Rule 12(b)(5) because it was not served within 120 days of the initial filing as required by Rule 4(m). Rule 4(m) provides that:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of a complaint, the court . . . shall dismiss the action . . . or direct that service be effected with a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Based on the facts laid out above – including the significant facts that the Connecticut Secretary of State’s website did not designate the correct agent for service of process on Futures and that Futures’ counsel had notice of the complaint before the 120-day deadline – I find that McNeill has demonstrated good cause why her complaint was not timely served. Therefore, I am required to extend the time for service of process.

Even were I not to find good cause, I would not dismiss this case but would rather, as the Federal Rules permit, extend the time for service of process.

For the aforementioned reasons, McNeill's time to serve Future is extended, *nunc pro tunc*, until January 14, 2004, and so, her complaint being timely served, Futures' Motion to Dismiss (doc. # 13) is DENIED. In light of this ruling, the oral argument originally scheduled for June 1, 2004 is not necessary and is cancelled.

It is so ordered.

Dated at Bridgeport, Connecticut, this 28th day of May 2004.

/s/ Stefan R. Underhill  
Stefan R. Underhill  
United States District Judge