

**UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT**

ALEXANDER CARILLO,	:	
	:	
Plaintiff,	:	NO. 3:05cv1417 (MRK)
	:	
v.	:	
	:	
EDWARD HAGERTY,	:	
DONALD FAULSTICK, and	:	
AMHERST COLLEGE,	:	
	:	
Defendants.	:	

RULING AND ORDER

In this diversity action, Plaintiff Alexander Carillo sues Edward Hagerty, Donald Faulstick, and Amherst College for injuries Mr. Carillo sustained during a water polo match at a tournament hosted by Yale University on September 20, 2003. Mr. Carillo, a student at the United States Coast Guard Academy in New London, claims that Mr. Hagerty, an Amherst student, negligently struck him with his fist when the Coast Guard Academy played Amherst in the tournament. Mr. Carillo started this lawsuit in Connecticut Superior Court in New London, but Mr. Faulstick and Amherst removed it to this Court. *See* Notice of Removal [doc. #1]. Mr. Hagerty now moves to dismiss the action as to him on the ground that the Court lacks personal jurisdiction over him because he was not properly served. *See* Motion to Dismiss [doc. #17]. The Court agrees and therefore GRANTS Defendant's motion.

Under Rule 4(e) of the *Federal Rules of Civil Procedure*, service on an individual may be made "pursuant to the law of the state in which the district court is located, or in which service is effected, for the service of a summons upon the defendant in an action brought in the courts of

general jurisdiction of the State; or, . . . [by personal service] . . . or by leaving copies . . . at the individual's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein or by delivering a copy of the summons and of the complaint to an agent authorized by appointment or by law to receive service of process." Rule 4 requires plaintiffs to serve defendants with the summons and complaint in accordance with the various alternatives prescribed. *Link Group Intern., L.L.P. v. Toymax (H.K.) Ltd.*, 127 F. Supp.2d 280, 286 n.5 (D. Conn. 2000). "A showing that the defendant has had actual notice of the lawsuit is not sufficient to bar a motion to dismiss . . ." *Id.* (quoting *Martin v. New York State Dep't of Mental Hygiene*, 588 F.2d 371, 373 (2d Cir. 1978)).

In this case, Mr. Carillo sought to effectuate service on Mr. Hagerty under Connecticut's long-arm statute, which provides the following method for effecting service on non-resident individuals:

(c) Any nonresident individual, . . . over whom a court may exercise personal jurisdiction, as provided in subsection (a) of this section, shall be deemed to have appointed the Secretary of the State as its attorney and to have agreed that any process in any civil action brought against the nonresident individual, . . . may be served upon the Secretary of the State and shall have the same validity as if served upon the nonresident individual . . . personally. The process shall be served by the officer to whom the same is directed upon the Secretary of the State by leaving with or at the office of the Secretary of the State, at least twelve days before the return day of such process, a true and attested copy thereof, *and by sending to the defendant at the defendant's last-known address*, by registered or certified mail, postage prepaid, return receipt requested, a like true and attested copy with an endorsement thereon of the service upon the Secretary of the State. . . .

Conn. Gen. Stat. § 52-59b. (emphasis added).

Interpreting the last-known-address requirement of § 52-59b, the Connecticut Supreme Court has explained that "[t]he requirement that the copy be mailed to the defendant at his 'last-known

address' does not mean the last address known to the plaintiff but does mean the last address of the defendant so far as it is known, that is, by those who under the ordinary circumstances of life would know it." *D'Occhio v. Connecticut Real Estate Comm'n*, 189 Conn. 162, 171 (1983) (quoting *Hartley v. Vitiello*, 113 Conn. 74, 80 (1931)). Before concluding that the defendant cannot be located, a plaintiff must take reasonable steps to identify the defendant's whereabouts. "Unless the defendant has departed for parts unknown, [last-known address] means his actual address; if he has disappeared, it means his last address so far as it is reasonably possible to ascertain it. This address the plaintiff must learn at his peril" *Hartley*, 113 Conn. at 80. If a defendant's address is unknown, a plaintiff may serve process in a manner that makes it "reasonably certain to reach the addressee." *D'Occhio*, 189 Conn. at 172.

Mr. Hagerty argues that Mr. Carillo has not complied with § 52-59b because a copy of the complaint was not sent to his last-known address, as Connecticut courts have construed that phrase. The Marshal's return of service indicates that a copy of the complaint was mailed to Mr. Hagerty at Amherst College on August 15, 2005. Mot. to Dismiss [doc. #17] Ex. B. The complaint, which was received by Amherst College on August 17, 2005, was not addressed to any post office box or dormitory but was simply addressed to Mr. Hagerty at Amherst College, Amherst, Massachusetts. Amherst refused to accept service on Mr. Hagerty's behalf and returned the complaint to Mr. Carillo on September 6, 2005. Mr. Carillo made no other efforts to provide Mr. Hagerty with a copy of the complaint. It is undisputed, that in August 2005, Mr. Hagerty did not reside at Amherst College in Massachusetts but instead was living with his parents in New York City. *See* Mot. to Dismiss [doc. #17] Ex. A at ¶¶ 3-4. Mr. Hagerty did not return to the Amherst College campus until sometime in early September 2005.

Mr. Carillo maintains that the attempt to serve the complaint on Mr. Hagerty by mailing to Amherst was proper because the college refused to disclose Mr. Hagerty's permanent address. *See* Supplemental Memorandum of Law in Support of Plaintiff's Objection to Defendant's Motion to Dismiss [doc. #29-1] at 2. Mr. Carillo also points to the fact that he retained the services of a private investigator. Using the limited information about Mr. Hagerty to which Mr. Carillo had access, the investigator's search produced 226 possible matches, and Mr. Hagerty's exact address could not be ascertained. *See id.* at 3 & Ex. F. Therefore, because Mr. Hagerty's home address could not be found and because it was known that Mr. Hagerty was a student at Amherst, the mailing of service to Mr. Hagerty at Amherst was proper. *See id.* at 4.

The Court is unpersuaded. While it may be true that Mr. Hagerty's address was unknown to Mr. Carillo, it is undisputed that "to those who under the ordinary circumstances of life would know it," Mr. Hagerty's address far from unknown – and it was certainly not at Amherst College, Amherst, Massachusetts as of August 2005. *See D'Occhio*, 189 Conn. at 171. Merely mailing the complaint to Amherst was not sufficient to discharge Mr. Carillo's obligation to take reasonable steps to identify Mr. Hagerty's address. Many additional steps were available to Mr. Carillo. For instance, as Mr. Carillo's attorney admitted in an on-the-record telephonic conference held on November 21, 2005, Mr. Hagerty could have been personally served in Massachusetts when he returned to Amherst in early September. *See* Minute Entry for Proceedings Held Before Judge Mark R. Kravitz [doc. #27]. Also, Mr. Carillo could have served Amherst with interrogatories and compelled Amherst to disclose Mr. Hagerty's last known address. *See id.* Finally, it appears that Mr. Carillo's investigator may have learned Mr. Hagerty's social security number and that, by using it, the investigator may have located Mr. Hagerty's New York City address as of August 25, 2005. *See* Defendant's

Supplemental Reply Brief [doc. # 30] Ex. A; Pl.'s Supplemental Mem. [doc. #29] Ex. F. Yet no efforts were made thereafter to serve a copy of the complaint on Mr. Hagerty at his New York City address.

Based upon the foregoing facts, the Court concludes that Mr. Hagerty's true address as well as his actual whereabouts could have been ascertained by Mr. Carillo with reasonable effort but that he failed to do so. *See Ross v. Castelano*, 2003 WL 21153509, at *2-*3 (Conn. Super. Ct. May 6, 2003) (dismissing complaint for failure to comply with last-known-address requirement of Conn. Gen. Stat. § 52-59b). As the Connecticut Supreme Court explained long ago, a plaintiff who fails to learn a defendant's true address does so "at his peril." *Hartley*, 113 Conn. at 80. Because Mr. Carillo failed to comply with the service requirements of Conn. Gen. Stat. § 52-59b, there has been no effective service on Mr. Hagerty, and, therefore, this Court lacks personal jurisdiction over him. Accordingly, the Court GRANTS the Motion to Dismiss [doc. #17] and dismisses the action against Mr. Hagerty.

IT IS SO ORDERED,

/s/ Mark R. Kravitz
United States District Judge

Dated at New Haven, Connecticut: December 13, 2005.