

IN THE CIRCUIT COURT OF JACKSON COUNTY, MISSOURI
AT INDEPENDENCE

SAMUEL K. LIPARI,)	
)	
Plaintiff,)	
)	Case No. 0816-CV04217
vs.)	Division 2
)	
NOVATION, LLC, et al.)	
)	
Defendants.)	

DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS

Defendants Piper Jaffray Companies and Andrew Duff must be dismissed. Plaintiff fails to state cognizable claims against them upon which relief may be granted; plaintiff's claims are time-barred; plaintiff's claims are barred by the doctrine of collateral estoppel; and plaintiff's claims must be dismissed because plaintiff's assertions of service of process and jurisdiction are improper over these defendants. Because plaintiff's arguments to the contrary are without merit, dismissal is the appropriate remedy.

A. Defendants Incorporate the Arguments and Authorities of All Other Co-Defendants Entitling Them to Dismissal

The co-defendants in this matter have filed motions to dismiss based upon numerous grounds, including that plaintiff has failed to state claims upon which relief may be granted, plaintiff's claims are barred by collateral estoppel, by the expiration of the applicable statute of limitation, and other pleading deficiencies. These defendants hereby incorporate all of those arguments and authorities justifying their dismissal.

B. Service of Process Over Piper Jaffray Companies and Andrew Duff is Improper and Therefore, the Court Lacks Jurisdiction

In their motion, defendants made clear that the plaintiff has failed to obtain sufficient, legally cognizable service of process over them. The Court thus lacks jurisdiction over the defendants and they should be dismissed from the suit.

In his opposition, plaintiff does not contradict the authorities upon which these defendants rely. Instead, even though this is a Missouri case, purporting to allege Missouri causes of action and filed in a Missouri court, Lipari relies upon inapplicable Kansas statutes in suggesting that service over these defendants is sufficient. He is wrong. The Kansas statutes have no place in this matter and this Court is not bound by the Kansas Rules of Civil Procedure.

Notwithstanding the statutes' inapplicability, plaintiff's reliance upon them is otherwise misplaced. While he claims that K.S.A. § 60-303(c) does not apply to the service of an original summons and petition, he is wrong. In fact, Lipari omits relevant language from several statutes specifically identifying service of the original petition and summons:

(b) *Who serves process.* The sheriff of the county in which the action is filed shall serve any process by any method authorized by this section, or as otherwise provided by law, unless a party, either personally or through an attorney, elects to undertake responsibility for service and so notifies the clerk.

* * *

(d) *Personal and residence service.* (1) The party may file a written request with the clerk for personal or residence service. Personal service shall be made by delivering or offering to deliver a copy of the process and accompanying documents to the person to be served. Residence service shall be made by leaving a copy of the process and petition, or other document to be served, at the dwelling house or usual place of abode of the person to be served with some person of suitable age and discretion residing therein.

* * *

(2) When process is to be served under this subsection, the clerk of the court shall deliver the process and sufficient copies of the process and petition, or other document to be served, to the sheriff of the county where the process is to be

served or, if requested, to a person appointed to serve process or to the plaintiff's attorney.

(3) Service, levy and execution of all process under this subsection, including, but not limited to, writs of execution, orders of attachment, replevin orders, orders for delivery, writs of restitution and writs of assistance, shall be made by a sheriff within the sheriff's county, by the sheriff's deputy, by an attorney admitted to the practice of law before the supreme court of Kansas or by some person appointed as a process server by a judge or clerk of the district court, except that a subpoena may also be served by any other person who is not a party and who is not less than 18 years of age. Process servers shall be appointed freely and may be authorized either to serve process in a single case or in cases generally during a fixed period of time.

K.S.A. § 60-303.

Lipari does not show that either he or any other person has been authorized by the State of Missouri or the State of Kansas to serve process. In both states, in order for a special process server to serve a summons and petition, the person must be specially appointed by the court. There is no such proof here. Nor is there any proof of service by the Sheriff in Johnson County, Kansas. Finally, there is no evidence that any counsel retained by plaintiff properly served process.

In an effort to suggest that service upon Mr. Duff was appropriate, plaintiff relies upon K.S.A. § 60-304(h) to suggest that he could serve a local office of Piper Jaffray Companies in order for that service to be proper upon Mr. Duff, a resident of the state of Minnesota. However, the obvious reading of subsection (h) is that service upon an employer is proper only if the employee is employed in the State of Kansas but does not reside there. K.S.A. § 60-203(h) ("defendant is a non-resident who is employed in this state"). There is no allegation or evidence that Mr. Duff is employed in the State of Kansas. Moreover, plaintiff has not complied with subsection (h) in that no affidavit has been filed with respect to proper service.

Likewise, the purported returns of service in Jackson County, Missouri, using summonses issued by the clerk of the Jackson County Circuit Court, are simply improper with respect to the

type of service made in this case. The forms of return also are improper because they are not signed or notarized.

In sum, service is improper, insufficient, and the Court lacks jurisdiction to proceed against defendants Piper Jaffray Companies and Andrew Duff.

C. Conclusion

For these reasons, as well as those stated in the initial motion and suggestions, defendants Piper Jaffray Companies and Andrew Duff pray for an Order of the Court dismissing them from this cause of action, for their costs incurred, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was delivered via United States Mail, postage prepaid, this ~ day of June, 2008, to:

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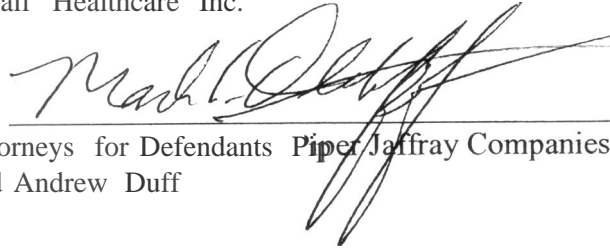
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JAFFRAY COMPANIES AND ANDREW DUFF

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing was delivered via United States Mail, postage prepaid, this 18th day of June, 2008, to:

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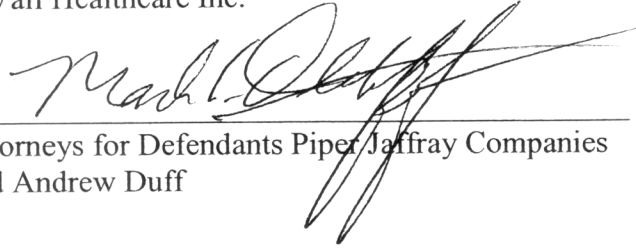
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