

DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

KEVONGH J. GRANT,

Plaintiff,

v.

**WITT O'BRIEN, LLC, APTIM
ENVIRONMENTAL AND
INFRASTRUCTURE, INC., ODEBRECHT
CONSTRUCTION, INC., NATHAN
MCCANN, ANDREW MCCANN, JOHN
DOES, JANES DOES, and UNKNOWN
CORPORATIONS,**

Defendants.

1:19-cv-00025-WAL-GWC

**TO: Emile A. Henderson, III, Esq.
Sofia L. Mitchell, Esq.
Adam G. Christian, Esq.
Alex M. Moskowitz, Esq.
Lisa Michelle Komives, Esq.**

**ORDER GRANTING PLAINTIFF'S MOTION FOR ADDITIONAL TIME TO SERVE
DEFENDANTS NATHAN MCCANN AND ANDREW MCCANN AND ODEBRECHT
CONSTRUCTION, INC.**

THIS MATTER is before the Court upon Plaintiff's Motion for Additional Time to
Serve Defendants Nathan McCann And Andrew McCann And Odebrecht Construction, Inc.
(ECF No. 87).¹

¹ The instant motion—once again—does not contain the required LRCi 7.1(f) representation. The Court will make an exception considering that the subject matter of the instant motion was discussed at the Court's November 10, 2021 initial conference.

Grant v. Witt O'Brien's LLC et al.

1:19-cv-00025-WAL-GWC

Order Granting Plaintiff's Motion for Additional Time

Page 2

This Court previously granted Plaintiff an extension of time to serve Defendants Nathan McCann, Andrew McCann, and Odebrecht Construction, Inc. (OCI). ECF No. 70.

Service on Nathan McCann and Andrew McCann by publication was due by January 4, 2022. ECF No. 71. Plaintiff seeks leave to serve Defendants Nathan and Andrew McCann further out of time because of delays in receiving the executed summons from the Clerk's office and beginning publication in the St. Croix Avis. Mot. at 2. Plaintiff requests an extension for service to January 15, 2022. *Id.*

Service on Odebrecht was due on December 20, 2021. ECF No. 70. Plaintiff untimely served Defendant OCI on December 21, 2021 and filed proof of service on December 28, 2021. ECF No. 85. Plaintiff seeks to have their untimely service accepted by the Court. Mot. at 3.

Pursuant to Federal Rule of Civil Procedure 6(b)(2), the Court may, for good cause, extend the time on a motion made after the time has expired if the party failed to act because of excusable neglect.² Federal Rule of Civil Procedure Rule 4(m) directs the court to extend the time for service for an appropriate period if the plaintiff shows good cause for the failure to serve defendant within 90 days after the complaint was filed. *Id.* Burden of proving good cause for failing to effect timely service is on the party responsible for effecting service; good cause focuses on plaintiff's diligence in attempting service on defendant, and in determining whether there was good cause for delay, the court is

² Plaintiff does not cite Rule 6 or address excusable neglect in the instant motion.

Grant v. Witt O'Brien's LLC et al.

1:19-cv-00025-WAL-GWC

Order Granting Plaintiff's Motion for Additional Time

Page 3

required to consider plaintiff's reasonable efforts to effect service. *Bascombe v. Owners'*

Ass'n of Estate of Questa Verde Townhouses, 149 F.R.D. 517, 518 (D.V.I. 1992).

If good cause for failure to timely effect service does not exist, the district court retains discretion to either dismiss the case or extend time for service. *Harrison v. Bornn, Bornn & Handy*, 200 F.R.D. 509, 512 (D.V.I. 2001).

Having reviewed the motion and upon consideration thereof, the Court finds that Plaintiff has established good cause. Thus, the Court will extend the time for service.

Accordingly, it is now hereby **ORDERED**:

1. Plaintiff's Motion for Additional Time to Serve Defendants Nathan McCann And Andrew McCann And Odebrecht Construction, Inc. (ECF No. 87) is **GRANTED**;
2. Plaintiff's untimely service upon Defendant OCI is **ACCEPTED**; and
3. The time for effectuating service of process upon Defendants Nathan and Andrew McCann is extended to **January 15, 2022**.

ENTER:

Dated: December 30, 2021

/s/ George W. Cannon, Jr.
GEORGE W. CANNON, JR.
U.S. MAGISTRATE JUDGE