DISTRICT COURT OF THE VIRGIN ISLANDS

DIVISION OF ST. CROIX

AARON FENWICK, **Plaintiff,** **v.** **SEABORNE VIRGIN ISLANDS, INC. and SEASTAR HOLDINGS, INC.,** **Defendants.**	**1:20-cv-00032-WAL-EAH**

TO: Aaron Fenwick, *pro se*

ORDER AND REPORT & RECOMMENDATION

THIS MATTER comes before the Court on a Motion for Change of Venue to United States Bankruptcy Court for the District of Delaware, filed on January 21, 2025 by Plaintiff Aaron Fenwick, appearing pro se. Dkt. No. 52. For the reasons that follow, the Court will deny Fenwick's motion, and will recommend to the District Judge that this case be dismissed.

BACKGROUND

Plaintiff Aaron Fenwick, pro se, filed this employment discrimination complaint in July 2020 against Defendants Seaborne Virgin Islands, Inc. ("Seaborne") and SeaStar Holdings, Inc. ("SeaStar"). Dkt. No. 1. He raised claims under the Americans with Disability Act, the Family and Medical Leave Act, and the Virgin Islands Civil Rights Act related to events that occurred in 2016 when he was a pilot for Seaborne Airlines on St. Croix. *Id.*

Then-Magistrate Judge George Cannon, Jr. issued an Order in March 2021 ordering Fenwick to show cause why the case should not be dismissed for failure to prosecute, given that no activity had occurred in the action since November 2020 when Fenwick purportedly effected service on Defendant SeaStar. Dkt. No. 10. Thereafter, Fenwick filed an affidavit of service on Seaborne, Dkt. No. 12, and Judge Cannon discharged the Order to Show Cause, Dkt. No. 15. In August 2021, Fenwick moved to extend the time to file a Resident Agent Authorization, Dkt. No. 22, which Judge Cannon granted, Dkt. No. 23. In so ruling, Judge Cannon observed that the deadline to serve the Defendants had been October 20, 2020 and the time had expired without proper service. *Id*. He concluded that, under Fed. R. Civ. P. 4(m), Fenwick had not shown good cause to extend the time to serve the summons and complaint and thus an extension was not mandatory. *Id*. However, Judge Cannon exercised his discretion to extend the time until November 8, 2021 for Fenwick to serve the Defendants. *Id.* On November 13, 2021, Fenwick filed proof of service on the resident agent of SeaStar and requested an extension of time to serve Seaborne. Dkt. No. 25. This document indicated for the first time that both Defendants had been in Bankruptcy Court but did not provide any details about the status of those cases. *Id.* Judge Cannon granted the motion, extending the time to effect proper service on the Defendants to February 21, 2022. Dkt. No. 26. On that date, Fenwick filed a notice in which he stated that he had previously served SeaStar and that he had served Seaborne through its resident agent. Dkt. No. 28.

Judge Cannon held a telephonic conference on March 15, 2022. Dkt. No. 29, 33. The minute entry from that conference indicated that Judge Cannon informed Fenwick that the Defendants had not been properly served and had not appeared and encouraged Fenwick to obtain counsel. Dkt. No. 34. Fenwick stated that he did not understand why service was improper, and requested that the case not be dismissed for failure to prosecute. *Id.*

However, nothing substantive took place in this case for over two and one-half years. In October 2024, this Court issued an Order to Show Cause for Fenwick to explain in person why this action should not be dismissed for failure to prosecute, given that the case had been filed over four years previously and service on the Defendants still had not been effected despite numerous extensions. Dkt. No. 37. At the November 2024 show cause hearing, the Court granted Fenwick a final opportunity to serve the Defendants, emphasizing that it would not permit any extensions of that service deadline under any circumstances. It ordered that service be effected by January 20, 2025. Dkt. No. 51.

Fenwick did not file the proof of service that the Court required by the January 20, 2025 deadline. Instead, on January 21, 2025, he filed the instant Motion for a Change of Venue. Dkt. No. 52. In the motion, Fenwick asserts that he worked for Seaborne, which was wholly owned by SeaStar, and Seaborne and SeaStar both filed for bankruptcy in the District of Delaware in January 2018. *Id.* The Bankruptcy Judge permitted consolidation and joint administration of the bankruptcy proceedings of Seaborne and SeaStar. *Id.* at 1-2. The SeaStar bankruptcy case closed in September 2020 and the bankruptcy discharged. *Id.*

Fenwick adds that, after the show cause hearing, he again served the registered agents for Seaborne and SeaStar with the same documents he had served them before, as well as with a request for waiver of service. *Id*. at 2. Neither Defendant returned the waiver of service. *Id.* Fenwick posits that the Defendants did not respond because they had no legal obligation to do so, given that the cases had been closed in bankruptcy court. *Id.* at 3. Consequently, he intends to create a legal obligation for them to respond by reopening the bankruptcy cases to have registered agents reassigned so they can be served in this action. *Id.* He cites 11 U.S.C. § 350, the statute that provides for reopening a bankruptcy case.

Fenwick also asserts that he contacted the 110 attorneys listed on the Virgin Islands Bar Association's website, and they all declined to represent him. *Id.* He states that some attorneys told him that they feared suing Seaborne, even as a bankrupt entity, because the company would retaliate by restricting or barring them from using the seaplane. Fenwick therefore requests to change venue of this action to the U.S. Bankruptcy Court in Delaware so that he would have a pool of attorneys with whom he could seek representation who would not care about the use of the seaplane. *Id.*

DISCUSSION

I. Motion to Transfer

Fenwick purportedly seeks to transfer this case to the U.S. Bankruptcy Court for the District of Delaware, apparently because the Defendants in this case filed for bankruptcy there. However, those bankruptcy cases were closed, the Defendants were discharged, and thus the Defendants have no "legal obligation" to respond to any service in this case. He appears to believe that transferring this case to Bankruptcy Court would permit him to reopen the bankruptcy cases to have an agent appointed that can be served with the summons and complaint in this case.

Because Fenwick is proceeding pro se, he likely does not and did not realize that when defendants in a case filed in district court declare bankruptcy, the case is stayed in district court[1]—not transferred—so that the bankruptcy process can play out and claims against the entity seeking bankruptcy can be made and resolved. Once that process is completed and the bankruptcy case is over and the stay has lifted, the parties reconvene in district court to determine if anything remains of the district court case, or whether the bankruptcy proceedings and/or discharge have foreclosed any monetary relief sought by the plaintiff. *See, e.g.*, *Harrington v. Purdue Pharma L. P.*, 603 U.S. 204, 214-15 (2024) ("[A] bankruptcy court's . . . discharge not only releases or voids any past or future judgments on the discharged debt; it also operates as an injunction . . . prohibit[ing] creditors from attempting to collect or to recover the debt.") (internal quotation marks and alterations omitted).

This case should have been stayed since its inception because at the time Fenwick filed it, the Defendants were engaged in bankruptcy proceedings. But he did not inform the Court of that fact and this case lurched along, with fits and starts, and the Defendants were never properly served. After a two and a half-year hiatus, where Fenwick had no contact with the Court, the Court held a show cause hearing in November 2024 and issued an Order that provided him a final opportunity to serve the Defendants by January 20, 2025. Because he did not serve the Defendants by the deadline in the Order—which the Court stressed was a final deadline—he now attempts to circumvent the Order's directive by filing the motion to transfer. He provides no authority, statutory or otherwise, that would permit this Court to

---

[1] The Bankruptcy Code, 11 U.S.C. § 362, provides that actions against a debtor may not proceed during the pendency of the bankruptcy.

transfer a civil case to bankruptcy court—particularly where the bankruptcy court case that is the ostensible reason for the transfer ended over four years ago.[2] The motion to transfer has no legal basis, and this Court will not provide such relief.

II. Extension of Time to Serve

But it appears that Fenwick is seeking a different type of relief. *See Thorpe v. Dep't of Treasury, Div. of Pensions & Benefits*, No. 24-cv-1463, 2024 WL 4476163, at *5 (D.N.J. Oct. 11, 2024) (courts can assess motions "to evaluate the relief Plaintiff actually seeks") (citing cases). The relief Fenwick is *actually* seeking from this Court is another extension of time to serve the Defendants, ostensibly to allow him a foray into bankruptcy court for an open-ended amount of time to effect what he believes is the only way he can properly serve the Defendants in this case for this case—thereby permitting *this* case to go forward.

A. Applicable Rule and Case Law

Federal Rule of Civil Procedure 4(m) governs the timeframe for service of a summons and complaint. It provides, in pertinent part:

> **(m) Time Limit for Service.** 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. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.

---

[2] The proper method for transferring a related action to bankruptcy court already hearing a bankruptcy case is to seek change of venue in the non-bankruptcy forum under 28 U.S.C. § 1412 and then, in bankruptcy forum, refer the related action to bankruptcy court. *Maritime Elec. Co. Inc. v. United Jersey Bank*, 959 F.2d 1194, 1212 (3d Cir. 1991). However, the bankruptcy case must be *pending* in order to effect such transfers. *Abrams v. Gen. Nutrition Cos., Inc.*, No. 06-cv-1820, 2006 WL 2739642, at *9 (D.N.J. Sept. 25, 2006).

Fed. R. Civ. P. 4(m).

The Third Circuit has equated good cause under Rule 4(m) with the concept of excusable neglect, "which requires a demonstration of good faith on the part of the party seeking an enlargement and some reasonable basis for noncompliance within the time specified in the rules." *Mathies v. Silver*, 450 F. App'x 219, 222 (3d Cir. 2011) (internal quotation marks omitted). The factors a court should consider in evaluating whether good cause exists are: "(1) the reasonableness of the plaintiff's efforts to effect service; (2) prejudice to the defendant because of untimely service; (3) whether the plaintiff has moved for an enlargement of time; and (4) whether the statute of limitations will bar the plaintiff's claims if the action is dismissed." *Hamilton v. Hamilton,* No. 4:19-CV-01517, 2020 WL 487128, at *1–2 (M.D. Pa. Jan. 30, 2020) (citing *Mathies*, 450 F. App'x at 222). A mistake of law "does not rise to the level of exhibiting a reasonable basis for . . . noncompliance with service requirements." *McLaughlin v. Amazon.com*, No. 23-cv-839, 2024 WL 3951060, at *4 (M.D. Pa. Aug. 27, 2024).

If a mandatory extension of service does not apply, a court must address whether to grant a discretionary extension of service and consider the following factors: "(1) actual notice of the legal action; (2) prejudice to the defendant; and (3) other relevant factors." *Id.* (citing cases). Moreover, the Third Circuit has cited the Advisory Committee Notes to Rule 4 to guide courts in determining whether a discretionary extension may be warranted: "(1) if the applicable statute of limitations would bar the refiled action; (2) if the defendant is evading service or concealing a defect in attempted service; and (3) if the plaintiff is appearing pro se." *Id.* A finding "of one of these factors does not necessitate an extension of time, and whether or not an extension for service is warranted remains at the discretion of the district court." *Id.* (citing *Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1306 (3d Cir. 1995) and *Chiang v. U.S. Small Bus. Admin.*, 331 F. App'x. 113, 116 (3d Cir. 2009) (holding that district court did not abuse its discretion by denying extension of time where defendants had actual notice of claims and statute of limitations on plaintiff's claim had run)).

B. Application

Viewing Fenwick's instant motion as another motion for an extension of time to serve the Defendants, the Court concludes that a mandatory extension is inapplicable. In August 2021, Judge Cannon held that Fenwick had not shown good cause for his failure to serve the Defendants under Rule 4(m) to support a mandatory extension of service. Dkt. No. 23. He permitted an extension on a discretionary basis, *id.*, which he allowed two more times, Dkt. Nos. 26, 51. Fenwick's instant motion provides no reason for the Court to revisit Judge Cannon's conclusion that Fenwick did not show good cause then to support a mandatory extension. Neither has Fenwick argued, much less shown, good cause now for his failure to serve the Defendants—particularly after two and one-half more years of inaction that prompted the Court to issue the October 2024 Order to Show Cause. The Court thus turns to whether it should grant an extension based on the non-exhaustive discretionary factors set forth above.

Fenwick has been litigating pro se, which might have weighed in favor of granting such an extension. But as a result of his not being trained in the law, Fenwick did not mention in any filing until November 2021—and even then ambiguously and without detail—that the Defendants had declared bankruptcy at some point. Details about the Defendants' bankruptcies only became clear years later in the instant filing in which Fenwick seeks to transfer his case. As a pro se filer, Fenwick likely was unaware of the significance of the fact that the Defendants were litigating in bankruptcy court at the time he initiated this lawsuit in district court, and thus that they were protected by bankruptcy's automatic stay under 11 U.S.C. § 362. And while this Court is not prepared to take a detour into bankruptcy law to further explain why Fenwick's lawsuit was in peril from the start, the fact that Defendants' bankruptcy cases were discharged two months after he filed his lawsuit in district court was likely fatal to his claims that arose in 2016, prior to Defendants' filing for bankruptcy protection. *Cf. Harrington*, 603 U.S. at 214-15.

The Court is also mindful that, based on the allegations in the Complaint, the statute of limitations may bar Fenwick from refiling his claims against the Defendants (even if a detour to bankruptcy court was possible, much less successful). Although this factor ordinarily weighs in favor of extending the service period, the opposite is true under the circumstances here. Statutes of limitations are intended to encourage "rapid resolution of disputes, repose for defendants, and avoidance of litigation involving lost or distorted evidence." *Romero v. Allstate Corp.,* 404 F.3d 212, 222 (3d Cir. 2005). Thus, "[t]he principal reason for statutes of limitations is to provide notice to defendants." *Dixon Ticonderoga Co. v. Estate of O'Connor,* 248 F.3d 151 (3d Cir. 2001).

On the record before the Court, it may well be that the statute of limitations had run at the time Fenwick filed his complaint in July 2020, given that the events complained of arose in 2016. Dkt. No. 1. In relation to the ADA claim, Fenwick indicates that the EEOC provided a right to sue letter in April 2020, but did not allege when he filed his EEOC complaint, *id.* ¶¶ 36, 37, nor did he attach a copy. Fenwick was required to file a charge of discrimination with the EEOC within 300 days of an alleged incident; the EEOC had 180 days to either resolve the charge or inform the complainant that it had not done so via a right to sue notice; and Fenwick had 90 days after receipt of the right to sue notice in which to sue. *See Paul v. Hovensa, L.L.C.*, No. 07-cv-51, 2013 WL 1408861, at *10 (D.V.I. Apr. 4, 2013). The four-year gap between the events at issue, ending in August 2016, and Fenwick's receipt of the right to sue letter could very well indicate that he failed to exhaust his administrative remedies and/or his ADA claim was untimely. And given that a Family & Medical Leave Act claim has a two-year statute of limitations (three years if there was a wilful violation), 29 U.S.C. § 2167(c)(1), (2), and the Virgin Islands Civil Rights Act has a two-year statute of limitations, *Paul,* 2013 WL 1408861, at *16, these claims appear to have been untimely when Fenwick filed his Complaint.

But even if the statute of limitations had not run, it would be exceedingly unfair to allow Fenwick another extraordinary extension of time to complete service because such an extension of Rule 4's service requirements would effectively result in almost a five-year tolling of the statute of limitations. The Defendants would clearly be prejudiced by having to defend such stale claims. Thus, the statute of limitations and prejudice to the Defendants factors weigh against granting another discretionary extension to serve.

In addition, nothing in the record shows that Defendants had actual notice of this lawsuit. As Fenwick has acknowledged, the entities upon whom he effected service had no "legal obligation" to accept service, given that both Defendants had been in bankruptcy proceedings and had emerged from those proceedings, and they have never appeared in this action. Accordingly, there was no allegation or argument that the Defendants were evading service or concealing a defect in attempted service.

In sum, no factor weighs in favor of the Court exercising its discretion to grant Fenwick's motion for another extension of time to serve Defendants and the Court will deny it. *See Mathies v. Silver*, No. 04-cv-2882, 2011 WL 2293312, at *7 (D.N.J. June 8, 2011), *aff'd*, 450 F. App'x 219 (3d Cir. 2011) ("The record in this matter clearly demonstrates that Plaintiff received multiple extensions of time to complete service and that further extensions are unwarranted."); *Veal v. United States*, 84 F. App'x 253, 255 (3d Cir. 2004) ("Without the showing of good cause, the decision whether to grant the request for more time in which to serve, or to dismiss the complaint, falls squarely within the Court's sound discretion.") (internal quotation marks omitted).

Because the Defendants have not been served in over four years, the Court recommends that this case be dismissed without prejudice. *Saleem v. Doe*, 850 F. App'x 135, 137 (3d Cir. 2021) (affirming dismissal under Rule 4(m) as without prejudice); *Mathies*, 450 F. App'x at 221 (if plaintiff has not completed service within time prescribed by rule and has not shown good cause, the court may either dismiss the complaint or grant an discretionary extension).

CONCLUSION

Based on the foregoing, it is hereby **ORDERED** that Fenwick's Motion for Change of Venue to United States Bankruptcy Court for the District of Delaware, Dkt. No. 52, is **DENIED**.

Given that service on the Defendants has not be effected after four and one-half years, it is hereby **RECOMMENDED** that the complaint be **DISMISSED WITHOUT PREJUDICE.**

Any objections to this Report and Recommendation must be filed in writing within fourteen (14) days of receipt of this notice, 28 U.S.C. § 636(b)(1), and must "specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis of such objection." LRCi 72.3. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. *See, e.g., Thomas v. Arn*, 474 U.S. 140 (1985).

ENTER:

Dated: February 3, 2025

/s/ Emile A. Henderson III
EMILE A. HENDERSON III
U. S. MAGISTRATE JUDGE