

2021 WL 4208697

United States District Court, M.D. Florida,  
Orlando Division.

UNITED STATES of America, Plaintiff,

v.

Lillian SHIFFMAN, Defendant.

Case No. 6:20-cv-1747-PGB-DCI

|

Signed 04/16/2021

## Attorneys and Law Firms

[Samuel Gene Fuller](#), [Robert Scott Silverblatt](#),  
U.S. Department of Justice, Washington, DC,  
for Plaintiff.

## Order

[DANIEL C. IRICK](#), UNITED STATES  
MAGISTRATE JUDGE

\*1 This cause comes before the Court for  
consideration without oral argument on the  
following motion:

**MOTION:** **United States' Motion for Order Declaring Defendant Served  
with Process (Doc. 18)**

**FILED:** **February 22, 2021**

**THEREON** it is **ORDERED** that the motion is **GRANTED**.

This cause comes before the Court on Plaintiff  
United States of America's Unopposed Motion  
for Order Declaring Defendant Served with  
Process (the Motion). Doc. 18. For the reasons  
set forth in this Order, the Motion is due to be  
granted.

### I. BACKGROUND

The United States has filed an Amended  
Complaint “to reduce to judgment civil  
penalties assessed against Lillian Shiffman  
(Defendant) based on her willful failure to  
report, pursuant to [31 U.S.C. § 5314](#) and its  
implementing regulations, her financial interest  
in and signature authority over one or more  
foreign bank accounts during 2010 and 2011.”  
Doc. 11. The pleading includes one Count to

Reduce to Judgment Willful FBAR Penalties  
for 2010 and 2011. *Id.*

The Court granted for good cause the United  
States’ request for an extension to serve the  
original Complaint. Doc. 10. The United States  
subsequently filed the Amended Complaint  
which includes allegations of Defendant's  
alleged evasion of process. Doc. 11. On January  
8, 2021, a summons was returned unexecuted  
as to Defendant. Doc. 15.

In summary, the United States made 10  
attempts to personally serve Defendant which  
includes 7 attempts through a private process  
server and 3 attempts through the United  
States Marshals Service. The 10 attempts  
were between November 16, 2020 and  
January 4, 2021 and were at Defendant's

home address. Doc. 18. The United States asserts that the Defendant's neighbor confirmed to the process server that the address was correct, and Defendant was not out of town. The United States adds that an attorney based in Switzerland contacted Robert Silverblatt, counsel for the United States, on Defendant's behalf and the attorney received correspondence that Mr. Silverblatt sent to Defendant's home address. The Switzerland attorney also told Mr. Silverblatt that Defendant does not want to accept service because being served "will only lead to a default judgment." Moreover, the United States was unsuccessful at securing Defendant's waiver of service pursuant to [Federal Rule of Civil Procedure 4\(d\)](#) despite its October 6, 2020 request.

In light of the unsuccessful attempts at service, on January 14, 2021, the United States served the summons, original Complaint, and Amended Complaint on the Florida Secretary of State as an agent on whom process may be served pursuant to [Fla. Stat. § 48.161](#). As such, the United States filed its Notice of Service of Process and supporting Affidavit, and the pending Motion requesting that the Court declare that Defendant has been served. Docs. 16, 17, 18. The United States has also filed Mr. Silverblatt's Declaration in support of the Motion. Doc. 19.

## II. LEGAL STANDARD

[Federal Rule of Civil Procedure 4\(e\)](#) states that an individual may be served by:

- i. following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district

court is located or where service is made; or

**\*2** ii. doing any of the following:

1. delivering a copy of the summons and of the complaint to the individual personally;
2. leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or
3. delivering a copy of each to an agent authorized by appointment or by law to receive service of process.

[Fed. R. Civ. P. 4\(e\)](#).

Florida law, under certain circumstances, permits service of a defendant who conceals his or her identity by serving the Florida Secretary of State. [Fla. Stat. §§ 48.161\(1\), 48.181\(1\)](#); *see also EHR Aviation, Inc. v. Lawson*, 2011 WL 46119, at \*1 (M.D. Fla. Jan. 6, 2011) (instructing the plaintiff how to perfect service of process through substituted service). "The courts have consistently observed that statutes relating to substituted service of process (in lieu of personal service of process) must be strictly construed; and the burden of proof to sustain the validity of substituted service of process rests upon the person seeking to invoke the provisions of such statutes." *Hughes v. Am. Tripoli, Inc.*, 2007 WL 2071529, at \*2 (M.D. Fla. July 17, 2007) (citing *Elmex Corp. v. Atlantic Fed. Sav. & Loan Ass'n of Ft. Lauderdale*, 325 So.2d 58, 61 (Fla. 4th DCA 1976)) (internal quotations omitted).

Florida Statute § 48.161(1) addresses substitute service of an individual, and it provides in pertinent part:

When authorized by law, substituted service of process on a ... person who conceals his or her whereabouts by serving a public officer designated by law shall be made by leaving a copy of the process with a fee of \$8.75 with the public officer or in his or her office or by mailing the copies by certified mail to the public officer with the fee. The service is sufficient service on a defendant who has appointed a public officer as his or her agent for the service of process. Notice of service and a copy of the process shall be sent forthwith by registered or certified mail ... to the defendant, and the defendant's return receipt and the affidavit of the plaintiff or his or her attorney of compliance shall be filed on or before the return day of the process or within such time as the court allows, or the notice and copy shall be served on the defendant, if found within the state, by an officer authorized to serve legal process, or if found without the state, by a sheriff or a deputy sheriff of any county of this state or any duly constituted public officer qualified to serve like process in the state or jurisdiction where the defendant is found.....

Fla. Stat. § 48.161(1).

In sum, substituted service requires that “(1) the plaintiff must send notice of service and a copy of the process by registered or certified mail to the defendant; (2) the plaintiff must file the defendant's return receipt; and (3) the plaintiff must file an affidavit of compliance.” *Verizon Trademark Servs., LLC v. Producers, Inc.*, No. 8:10-cv-665-T-33EAJ, 2011 WL 3296812, at \*4 (M.D. Fla. Aug. 2, 2011) (citing *Smith v.*

*Leaman*, 826 So. 2d 1077, 1078 (Fla. 2d DCA 2002)). Additionally, the plaintiff must justify the use of substituted service by demonstrating “[it] reasonably employed knowledge at [its] command, made diligent inquiry, and exerted an honest and conscientious effort appropriate to the circumstances, to acquire information necessary to enable [it] to effect personal service on the defendant.” *Id.* at 3 (citing to *Delancy v. Tobias*, 26 So. 3d 77, 78 (Fla. 3d DCA 2010)).

### III. Discussion

#### a. Substituted Service Was Appropriate

\*3 The United States argues that it made a diligent effort to determine the accuracy of Defendant's address and serve her personally. Doc. 18 at 3, 10. Based on Mr. Silverblatt's Affidavit and Declarations, other documentation, and representations made in the Motion, the Court finds that the United States reasonably employed knowledge at its command and made a diligent inquiry and effort to serve Defendant personally. Courts have previously held that a plaintiff who made efforts similar to the United States was warranted in their use of substituted service. *See Verizon*, 2011 WL 3296812 at \*5 (holding that the plaintiff was warranted in its use of substituted service after multiple attempts to serve the defendant at his home and after surveillance of the defendant's home); *Delancy*, 26 So. 3d at 79–80 (finding that the plaintiff was justified in her use of substituted service after twenty-two attempts to serve the defendant personally at a gated community).

b. The United States Complied with Florida's Statutory Requirements

The United States contends that it complied with [Florida Statutes section 48.161](#) because it mailed copies of the pleadings and summons to the Florida Secretary of State by certified mail which were delivered. Doc. 18 at 3-4. The United States asserts that the tracking number of the certified mailing reflects that it was delivered to Florida Secretary of State on January 20, 2021 and submits an exhibit in support of that information. *Id.* at 5. Further, according to Mr. Silverblatt's Declaration, on or about February 16, 2021, he received by mail a letter from the Florida Secretary of State dated January 25, 2021, which notes that the office “accepted” service on behalf of Defendant and that on January 20, 2021, it “filed” the summons and pleadings it received. Doc. 18-1 at 3. A copy of the letter is attached to the Declaration. Doc. 18-1 at 7.

On January 14, 2021, the United States also sent the pleadings and summons to Defendant's home by certified mail. Doc. 18 at 5. The Motion states that the package included a cover letter notifying Defendant of the deadline to respond and the fact that the United States was serving her through substituted service. *Id.* After a failed initial attempt, the United States Postal Service made a second delivery attempt on February 4, 2021 and “delivered the package to somebody at Defendant's home.” *Id.* However, due to COVID-19, the return receipt is not signed by Defendant. *Id.* at 5-6. Instead, the carrier wrote “COVID-19” on the signature line, which the United States contends is consistent with the postal service's

policy for delivering certified mail during the pandemic. *Id.* at 6.

Also, on January 14, 2021, the United States filed a Notice of Service of Process by Serving the Florida Secretary of State and sent a copy of the notice to Defendant by first-class and certified mail. *Id.* at 7. According to Mr. Silverblatt's Declaration, he previously submitted the post office's electronic copy of the return receipt for Defendant's certified mail delivery of the documents served on the Florida Secretary of State because he had not yet received a hard copy of the receipt in the mail. Doc. 19 at 1. Mr. Silverblatt states that on or about February 23, 2021, he received a hard copy receipt in the mail and attaches the same to the Declaration. *Id.* at 4.

Finally, on February 4, 2021, the United States filed Mr. Silverblatt's Affidavit which was within 21 days of service on the Florida Secretary of State. Doc. 17.

Upon review of Mr. Silverblatt's Affidavit and Declarations (Docs. 17, 18-1, 19) and the attached exhibits, the Court finds that the United States complied with [Florida Statutes section 48.161](#), despite not filing a return receipt from Defendant in light of the COVID-19 signature. The Court in *Verizon* excused the plaintiff's failure to file a return receipt from the defendant since it was evident that the defendant was evading service. *Verizon*, 2011 WL 3296812 at \*6. The Court, citing to a case from the Florida Second District Court of Appeal, explained that when a defendant conceals his or her whereabouts or makes it impossible for a plaintiff to personally serve the defendant,

failure to file the defendant's return receipt does not prevent the court from exercising jurisdiction over the matter. *Id.* at \*5 (citing to *Fernandez v. Chamberlain*, 201 So.2d 781, 786 (Fla. 2d DCA 1967)).

\*4 It is clear to the Court that Defendant has been concealing her whereabouts, otherwise making service of process impossible. In its quest to personally serve Defendant, the United States spoke with Defendant's neighbor and the Switzerland attorney, and attempted to serve her at her address on several occasions. In all, the United States has met its burden in demonstrating that Defendant is evading service and failure to obtain a return receipt from Defendant, especially taking into consideration COVID-19, will not render the substituted service void.

#### IV. CONCLUSION

Since the United States undertook a diligent effort to serve Defendant, demonstrated that Defendant is evading service, and complied with [Florida Statutes section 48.161](#), the Court finds that substituted service was warranted and properly executed.

Accordingly, the Motion (Doc. 18) is **GRANTED**. The United States of America properly served Defendant Lillian Shiffman. by substitute service of process upon the Florida Secretary of State pursuant to [Florida Statutes section 48.161](#).

**ORDERED** in Orlando, Florida on April 16, 2021.

#### All Citations

Slip Copy, 2021 WL 4208697, 128 A.F.T.R.2d 2021-5612