

**Maryland Circuit Court for Anne Arundel County**

CHRISTOPHER DAVID MCKEON,	)	
	)	
Plaintiff,	)	
v.	)	
Charing Cross Townhouse Condominium, Inc.,	)	Case No. 02-C-08-132379 I J
Joseph R. DeSantis,	)	
Carol Frankhouser,	)	
Kathleen Marek,	)	
Michael J. Helpa,	)	
COMANCO, INC.,	)	
Ruth Angell,	)	
Defendants.	)	
	)	

**PLAINTIFF’S RESPONSE AND OPPOSITION TO DEFENDANT CHARING  
CROSS TOWNHOUSE ASSOCIATION INC.’S MOTION TO DISMISS FOR  
INSUFFICIENCY OF SERVICE OF PROCESS**

COMES NOW the Plaintiff, Christopher D. McKeon (“Plaintiff”), *Pro Se*, and responds to and opposes Defendant Charing Cross Townhouse Association, Inc.’s Motion to Dismiss for Insufficiency of Service of Process. In support of his Motion, Plaintiff respectfully refers this Court to his Verified Memorandum of Points and Authorities.

Respectfully submitted,

\_\_\_\_\_  
Christopher McKeon  
1120 Soho Court, Crofton, MD 21114  
Plaintiff, *Pro Se*, 410-271-7907

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Plaintiff,	)	
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	)	Case No. 02-C-08-132379 I J
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Defendants.	)	

**PLAINTIFF’S VERIFIED MEMORANDUM OF POINTS AND AUTHORITIES  
IN SUPPORT OF HIS RESPONSE AND OPPOSITION TO DEFENDANT  
CHARING CROSS TOWNHOUSE ASSOCIATION INC.’S MOTION TO  
DISMISS FOR INSUFFICIENCY OF SERVICE OF PROCESS**

COMES NOW the Plaintiff, Christopher D. McKeon (“Plaintiff”), *Pro Se*, and submits this Verified Memorandum of Points and Authorities in Support of his Response and Opposition to Defendant Charing Cross Townhouse Association, Inc.’s Motion to Dismiss for Insufficiency of Service of Process.

**STATEMENT OF FACTS**

1. Plaintiff incorporates by reference Plaintiff’s Motion for an Emergency Ex Parte Temporary Restraining Order and Order to Show Cause Why a Preliminary Injunction Should Not Issue (“Ex Parte Motion”) filed June 17, 2008, and Plaintiff’s Affidavit and Motion to Substitute Service of Process, Affirm Sufficiency of Evaded Service of Process And Request for Expedited Summary Relief (“Motion to Substitute”) filed July 11, 2008, as if fully set forth herein.

2. Exhibits are attached to the instant Response unless noted.
3. Defendant Charing Cross Townhouse Association, Inc. (“Defendant,” or “Association”) mailed its Motion to Dismiss for Insufficiency of Service (“Motion to Dismiss”) to the clerk of the court on or about July 8, 2008, one day before the United States Postal Service (“USPS”) notified Plaintiff that the three (3) packages containing process for the following individuals—both as individual defendants and as officers of the Association—were officially unclaimed and ready for return to Plaintiff: Joseph R. DeSantis (Association president), Carol Frankhouser (Association secretary) and Kathleen Marek (Association treasurer) (hereinafter, “Defendant Officers”). (See Exhibit F, Plaintiff’s Motion to Substitute)
4. Concurrently with the above-captioned Complaint filed June 17, 2008 Plaintiff filed his Ex Parte Motion, which, if granted, would require time to prepare and deliver notice to the 122 homeowners of the condominium on or before June 19, 2008. Service by delivery pursuant to Rule § 2-121(a) was therefore paramount.
5. Pursuant to Rule § 2-124(d), Plaintiff is required to serve Defendant, a Maryland corporation, through its registered resident agent, president, secretary or treasurer.
6. However, the resident agent (Exhibit A) does not exist or cannot be served:
  - a. NAME: The individual registered with the Department of Assessments and Taxation (“Department”) is John P. Modderno. Upon information and belief, he is the same individual who helped establish the Association in 1979—29 years ago. A search of Verizon’s Internet telephone directory

and Google shows no “John P. Modderno,” “John Modderno,” or even a “J. Modderno” in Gambrills or any other town in Maryland.

- b. ADDRESS: The registered address is “Maple Drive, Gambrills, MD 21114.” This address lacks a street number pursuant to Md. Gen. Corp. Law § 1-101(b) and (s). Neither can the resident agent be served at or through Defendant’s registered principal office because that address is a post office box, which does not comply with Md. Gen. Corp. Law § 2-104(a)(4), § 1-101(b) or the Department’s regulations (*infra*, at 12). In any case, upon information and belief, the Crofton USPS says the post office box has not belonged to the Association for some years.
- c. Utilizing “readily available information,” (Brown v. American Institutes for Research, case 06cv2935 RWT, US Dist. Ct. for Md., U.S. District Judge Roger W. Titus (2007)) Plaintiff cannot ascertain if Defendant’s resident agent is living, or the certain address at which to serve him.

7. Plaintiff concludes Defendant has no lawful resident agent. In the event a Md. Corporation has no resident agent, Rule § 2-124(d) permits that “service may be made by serving the manager, any director, vice president, assistant secretary, assistant treasurer, or other person expressly or impliedly authorized to receive service of process.” [emph. added] (also, Md. Code, Courts and Judicial Proceedings (“Code”) § 6-312(c)(1) and (2)) Defendant’s Agent is just such a “person” and “manager” pursuant to Rule § 1-202(r) and its contract with the Association: “The Association...employs the Manager as the managing agent to manage and operate the aforesaid real and personal property under the following conditions,” (Section 1,

Managing Agent Contract, filed with Ex Parte Motion, Exhibit D); and “The Manager agrees to coordinate the Association’s legal proceedings with the attorney for the Association and all matters, including collection proceedings and court appearances.” (Sections 11 and 12E, Ibid.) Defendant’s usual place for receiving mail, coordinating legal proceedings and all matters is at and through the Agent. In fact, since the Agent has been Defendant’s property manager since at least 1982—26 years—no other person or place reasonably or rationally qualifies as Defendant’s principal place of business as “place” is defined in Md. Gen. Corp. Law § 1-101(r): “‘Principal office’ means: (1) The place in this State filed or recorded with the Department as the principal office of a corporation or domestic limited partnership; or (2) If there is no principal office designated, the main office of the corporation or domestic limited partnership in this State for the transaction of business.” A post office box (especially a “dead” one) hardly fits with this requirement; it appears to meet the statutory definition of “no principal office designated.” And, the Department communicates with the Association via Comanco (Exhibit A, Personal Property page).

8. Given the above, with no readily identifiable resident agent or principal office, Comanco is and has been acting as the Association’s de facto resident agent and as its main place for the transaction of business.

9. Therefore, and to comply with Rule § 1-351(b)’s ex parte notice requirement “commensurate with the circumstances,” Plaintiff served process on Defendant:

- a. Via email June 17, 2008 to all parties (Motion to Substitute, Exhibit A);
- b. Via personal delivery June 17, 2008 to the Agent (*supra*, at 5-8).

- c. Via certified mail-restricted delivery pursuant to Rule § 2-121(a)(3) June 18, 2008 to Defendant Officers. (both as officers and as individual defendants) (Motion to Substitute, Exhibit C) Defendant Officers received notice of delivery of certified mail the next day, June 19, 2008. Defendants evaded delivery, and USPS notified Plaintiff July 9, 2008 to pick up the evaded certified mail, which he did July 10, 2008. (Exhibit B)
10. On July 14, 2008 Plaintiff:
    - a. Filed a Return of Service and affidavit with the clerk of the court Exhibit C), with the returned, unopened certified mail packages containing summons attached thereto; (Motion to Substitute, Exhibit F) and
    - b. The clerk re-issued summons for all defendants per Plaintiff's request.

### **ARGUMENT**

11. Plaintiff incorporates as reference paragraphs 1-10 above as though fully set forth hereinunder.
12. Defendant appears unaware that its resident agent cannot readily be said to be alive or a Md. resident, that his address is statutorily faulty, not readily serveable and does not comport with the rules established by the Department, which identifies a resident agent as: "A person that a sheriff can walk up to and hand a summons to in order to get jurisdiction over the entity for court. It may or may not be one of the owners or officers. In some cases this can be a Maryland corporation. In all cases the address must be a physical address (no P.O. boxes)." (URL:

[#residentagent](http://sdatcert3.resiusa.org/ucc-charter/temp_defs.aspx)) See Rule § 1-101(b) and (s) for definitions of “address” and “resident agent.”

13. Defendant appears equally unaware that its principal office is nothing more than a “dead” post office box which fails to meet the Department’s statutory requirements: “All Maryland entities require some Maryland address where certain records are to be kept or certain requests can be made on management. This may or may not be where the actual business endeavor is conducted” (URL: [http://sdatcert3.resiusa.org/UCC-Charter/temp\\_defs.aspx#principaloffice](http://sdatcert3.resiusa.org/UCC-Charter/temp_defs.aspx#principaloffice)); or those of Md. Gen. Corp. Law § 1-101(r) where “address” is statutorily defined; or Md. Gen. Corp. Law § 2-110(c) which requires that: “The original or a certified copy of the bylaws, including any amendments to them, shall be kept at the corporation's principal office,” [emph. added] a feat that cannot be accomplished in a post office box (“dead,” reassigned or otherwise), but certainly can—and is—at the Agent’s Crofton office.

14. Indeed, the fact that it is not apparent the resident agent is even alive, that he has no proper and lawful address in Md. at which the Association can be served, and that the registered principal office is a “dead” post office box demonstrates the slovenly, inept and unlawful methods by which the Association and the Agent have managed the Association’s business and which is, among other things, a proximate cause of Plaintiff’s Complaint in the first place. Otherwise—and in a sense more charitably—Defendant Officers actually are aware the Association does not have a resident agent that can be served; but, believing Plaintiff’s only option thereby is to serve Defendant Officers, they colluded and conspired (on their own or with advice)

to studiously evade service via certified mail so as to pave the way for the instant motion.

15. “The rules governing service of process are not designed to create an obstacle course for plaintiffs to navigate, or a cat-and-mouse game for defendants who are otherwise subject to the court’s jurisdiction.” (TRW, Inc. v. Derbyshire, 157 F.R.D. 59, 60 (D. Col. 1994)) Rather, “the rules governing service of process are utilized for the purpose of providing a likelihood of bringing actual notice to the intended recipient,” (Minnesota Mining & Mfr’g Co. v. Kirkevold, 87 F.R.D. 317, 324 (D. Minn. 1980)), and actual notice satisfies the due process notice requirement and provides the court with personal jurisdiction. (Frank Keevan & Sons, Inc. v. Callier Steel Pipe & Tube, Inc., 107 F.R.D. 665, 671 (S.D. Fla. 1985)). Where the defendant receives actual notice and the plaintiff makes a good faith effort to serve the defendant pursuant to the federal rule, service of process has been effective. (Id.) Good faith efforts at service are effective particularly where the defendant has engaged in evasion, deception, or trickery to avoid being served. (Id.)

The service of process is not a game of hide and seek. Where service is repeatedly effected in accordance with the applicable rules of civil procedure and in a manner reasonably calculated to notify the defendant of the institution of an action against him, the defendant cannot claim that the court has no authority to act when he has willfully evaded the service of process. Electronics Boutique Holdings Corp. v. Zuccarini, No. Civ. A. 00- 4055, 2001 WL 83388, at \*9 (E.D. Pa. Jan. 25, 2001).

16. Thus, in the absence of a lawfully identified and serveable resident agent, and given that even the Department contacts the Association through the Agent, it is proper for Plaintiff to serve Defendant through Agent, especially as he desired to



facilitate timely notice of the Ex Parte Motion and then followed that service up with service on Defendant Officers. Even if service on the Association through the Agent can be found defective,

Defective service is not void where it actually gives the party served notice of the proceedings, and if a mistake in serving the summons does not prejudice a substantial right of the party served, it is to be disregarded. (72 CJS Process § 125; N.J. – DeGroot, Kalliel, Traint & Conklin, P.C. v. Camarota, 169 J.J. Super. 338, 404, A.2d 1211 (App. Div. 1979); N.Y. – Hoerning v. Stihl American, Inc., 70 A.D.2d 696, 416 N.Y.S.2d 395 (3d Dep’t 1979))

17. As more thoroughly argued with grounds in Plaintiff’s Motion to Substitute (at paragraphs 21-25 and 30-36), it is reasonable to presume that both Defendant and Defendant Officers received actual and sufficient notice of the action by means of the service effected on the Agent June 17, 2008, and were therefore sufficiently aware the certified mail packages addressed to them by Plaintiff most likely and probably contained service of process. Where the defendant has received actual notice of the action, “the provisions of [Fed. R. Civ. P.] Rule 4(e) should be liberally construed to effectuate service and uphold the jurisdiction of the court.” (Karlsson v. Rabinowitz, 318 F.2d 666 (4th Cir. 1963); Rovinski v. Rowe, 131 F.2d 687, 689 (6th Cir. 1942))

18. Defendant Officers plainly acknowledge the Complaint filed against the Association, their status as defendants, their taking of legal action in consequence of the lawsuit and thus the Court’s jurisdiction over them via two published notices to the condominium’s 122 homeowners and in a series of emails June 19-20, 2008 (Exhibit D, attached; and Motion to Substitute, at paragraphs 10-11; Exhibits D, E of same); thereby acknowledging sufficient service of process. Defendant Officers’ subsequent and publicized current participation in the instant proceedings with

evident intent to participate to whatever conclusion it may ultimately arrive (dismissal, settlement or judgment) reasonably indicates the principle embodied in CJS 72 Process § 67 applies here:

An acknowledgement or acceptance of service within the jurisdiction is the full equivalent of actual personal service<sup>1</sup>, especially where such acceptance of service is fortified by actual participation in the suit to its conclusion<sup>2</sup>, and renders such service unnecessary.<sup>3</sup> ([1, 2] Fla. – McCord v. Smith, 43 So 2d 704 (Fla. 1949); Idaho – Rudd v. Merritt, 138 Idaho 526, 66 P.3d 230 (2003); [3] N.C. – Moseley v. Deans, 222 N.C. 731, 24 S.E.2d 603 (1943))

19. However, Defendant Officers (on their own or with advice) evaded service (*supra*, at 17-18; and Motion to Substitute, at 24). But evasion of service of process via certified mail does not defeat effectual service. (Motion to Substitute, at 21-22) This Court should view Defendant (as well as Defendant Officers both as officers of the corporation and as individuals) as possessing actual knowledge and notice of the lawsuit such that actual notice of the action has been received and the Court's jurisdiction is obtained; hence, sufficiently served.

20. With all defendants in the above-captioned Complaint playing cat-and-mouse to evade service of process, Plaintiff is compelled to continue attempting ever more expensive methods of service while awaiting judgment on his Motion to Substitute.

21. Rule § 2-121(b) permits service by ordinary mail when certified mail is refused or unclaimed; there is also precedent that it effects sufficient service of process in 72 CJS Process § 78:

A postal service notation indicating that certified mail service failed by being unclaimed or not claimed satisfies the rule permitting service by ordinary mail to the last known address, if the party refuses to claim or to accept delivery of certified mail. (N.J. – First Resolution Inv. Corp. v. Seker, 171 N.J. 502, 795 A.2d 868 (2002))

22. In light of the fact that the Association has no registered agent that can be served process, the Agent (in all the roles and functions it fulfills as the principal office where all Association business is transacted, where all Association mail, legal proceedings and all matters are coordinated) clearly fulfills the role of registered agent as intended by the Maryland legislature, and thus, in the circumstances of this case, is, in addition to Defendant Officers, the appropriate person upon which to serve process for the Association. (Rule § 1-124(d); Code § 6-312(c)(1) and (2))

23. All of the above facts suggest rather clearly that Defendant planned and knew in advance of filing its Motion to Dismiss that Defendant Officers would evade service of process. By filing prior to the statutory expiration of the summons (Rule § 2-113) or the Court's acquiring jurisdiction (Rule § 2-507(b)), the Motion to Dismiss necessarily presumes Defendant Officers plan to and will continue to evade service of process until the clock on the summons or acquisition of jurisdiction runs out.

24. The facts support the inference that Defendant disingenuously filed its Motion to Dismiss in an effort to manipulate this Court for a quick technical dismissal by claiming Plaintiff did not serve its resident agent when it knew, or should have known, its resident agent is not servable, and by its officers secretly adopting a conspiratorial and collusive course of action solely intended to frustrate and deny service of process on the Association and themselves, individually, while alleging to this Court that Plaintiff negligently failed to serve its officers.

25. Defendant's Motion to Dismiss appears to be nothing more than a cynical ploy to strangle Plaintiff's Complaint at its outset by asking this Court to kill it before

cause for such a dismissal is ripe, or to artificially extend Defendant's time to answer the Complaint without having good cause to plainly request it. (see Rule § 2-321(a) and (c) and § 1-204(a)). In any case, the Motion to Dismiss and Defendant Officers' actions hardly square with Rule § 1-201: "These rules shall be construed to secure simplicity in procedure, fairness in administration, and elimination of unjustifiable expense and delay."

26. In its casual approach to the facts, Defendant failed to cite the appropriate legal ground to dismiss Plaintiff's Complaint for insufficiency of service of process (citing Rule § 2-322(a)(3) which refers to insufficiency of process).

27. Given the above facts, Plaintiff respectfully requests that this court also admonish and sanction Defendant pursuant to Rule § 1-341 for filing its Motion to Dismiss in bad faith "without substantial justification," shift to Defendant the costs of all ongoing efforts to effect service of process on them and the costs involved in preparing and serving the instant Response, and provide Plaintiff other necessary and additional relief.

WHEREFORE, Plaintiff respectfully requests that this Court deny Defendant Charing Cross Townhouse Association, Inc.'s Motion to Dismiss for Insufficiency of Service of Process.

Respectfully Submitted,

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Christopher McKeon, Plaintiff, *Pro Se*  
1120 Soho Court, Crofton, MD 21114  
410-271-7907

I DO SOLEMNLY SWEAR AND AFFIRM, under penalty of perjury, that the foregoing Plaintiff's Verified Memorandum of Points and Authorities in Support of His Response to Defendant Charing Cross Townhouse, Inc.'s Motion to Dismiss for Insufficiency of Service is true and correct to the best of my knowledge, information and belief.

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Christopher D. McKeon  
1120 Soho Court, Crofton, MD 21114

**CERTIFICATE OF SERVICE**

I, Christopher McKeon, Plaintiff, *Pro Se*, do hereby certify that a copy of the foregoing Motion has been served by First Class U.S. Mail, postage paid, this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_\_\_, upon the following:

Comanco, Inc., and  
Ruth Angell  
c/o Thomas R. Callahan  
Callahan & Callahan, P.C.  
2133 Defense Hwy  
Crofton, MD 21114

Charing Cross Townhouse Association,  
Inc.  
c/o Owen J. Curley  
Niles, Barton & Wilmer, LLP  
111 S. Calvert Street, Suite 1400  
Baltimore, MD 21202

Joseph R. DeSantis  
1001 Shire Court  
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Carol Frankhouser  
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Kathleen Marek  
1008 Broderick Court  
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Respectfully Submitted,

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