

Maryland Circuit Court for Anne Arundel County

CHRISTOPHER DAVID MCKEON,)	
1120 Soho Court Crofton MD 21114)	
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.)	
c/o Comanco, 2139 Defense Hwy Crofton MD 21114)	

PLAINTIFF’S AFFIDAVIT AND MOTION TO SUBSTITUTE SERVICE OF PROCESS, AFFIRM SUFFICIENCY OF EVADED SERVICE OF PROCESS AND REQUEST FOR EXPEDITED SUMMARY RELIEF

COMES NOW the Plaintiff, Christopher D. McKeon (“Plaintiff”), *Pro Se*, and moves this Court for an order that: 1) substitutes service of process by requiring Defendant Comanco to accept all future service of process on behalf of all Defendants in connection with the instant Complaint, and by requiring Defendants Helpa, Marek, DeSantis and Frankhouser to accept the June 17, 2008 service made on Defendant Charing Cross Townhouse Association, Inc. as sufficient service of process on themselves, respectively because they have evaded lawful service of process on themselves as corporate officers and/or as individuals; 2) affirms the sufficiency of the evaded service of process; and 3) expedited summary relief. 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

Maryland Circuit Court for Anne Arundel County

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1120 Soho Court Crofton MD 21114)
Plaintiff,)
v.)
Charing Cross Townhouse Condominium, Inc.,)
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COMANCO, INC.,)
Ruth Angell,)
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c/o Comanco, 2139 Defense Hwy Crofton MD 21114)

Case No. 02-C-08-132379 I J

**PLAINTIFF’S VERIFIED MEMORANDUM OF POINTS AND AUTHORITIES
IN SUPPORT OF HIS AFFIDAVIT AND MOTION TO SUBSTITUTE SERVICE
OF PROCESS, AFFIRM SUFFICIENCY OF EVADED SERVICE OF PROCESS
AND REQUEST FOR EXPEDITED SUMMARY RELIEF**

COMES NOW the Plaintiff, Christopher D. McKeon (“Plaintiff”), *Pro Se*, and submits this Verified Memorandum of Points and Authorities in Support of his Affidavit and Motion to Substitute Service Of Process, to Affirm Sufficiency of Evaded Service of Process and Expedited Summary Relief.

STATEMENT OF FACTS

1. Plaintiff incorporates by reference the entire record in the above-captioned action as if fully set forth herein.
2. All cited Exhibits are attached to the instant Memorandum except where specified.
3. Plaintiff notified Defendants June 17, 2008 via email that the above-captioned Complaint (“Complaint”) was filed with this Court and that “Service of the

Complaint on all parties is being prepared” pursuant to Maryland Rules of Civil Procedure (“Rule”) § 1-351(b) (Exhibit A)

4. Concurrently with his Complaint, Plaintiff filed June 17, 2008 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”).

5. Defendant Charing Cross Townhouse Association, Inc.’s (“Association”) resident agent’s address cannot be served pursuant to Md. Gen. Corp. Law § 1-101(b) and (s). Defendant Comanco, Inc. (“Agent”) is a “person expressly or impliedly authorized to receive service of process” for the Association pursuant to Rule § 2-124(d), § 1-202(r) and *infra*, at paragraphs 27-28.

6. Plaintiff served process on the Agent and the Association (as above) June 17, 2008 pursuant to Rule § 2-121(a)(1) and § 2-124(d), by means of delivery in person pursuant to Rule § 2-123 (“Delivered Service”), and notice returned to the Clerk of the Court June 18, 2008 pursuant to Rule § 2-126(a)(1) and (2). (stamped Writ of Summons, Exhibit B)

7. Upon information and belief, Comanco employee Jean instructed Defendant Angell (the Agent’s assigned manager for the Association) to sign for Service to the Association and Agent; she did so (Receipt, Exhibit B). Comanco has a contractual duty to inform all members of the Association’s Board of Directors (Defendants Helpa, Marek, DeSantis and Frankhouser [“Defendant Board Members”] and Plaintiff) of legal proceedings regarding the Association. (see Exhibit D, Managing Agent Contract Sections 11 and 12 E, filed with Ex Parte Motion) Hence, it is

reasonable for this Court to presume all Defendants were made aware and reasonably notified of the Complaint as of June 17, 2008.

8. Plaintiff certifies under penalty of perjury that he also served the Association through its officers pursuant to Rule § 2-124(d) and as individuals pursuant to Rule § 2-124(b): Kathleen Marek (Association treasurer), Joseph R. Desantis (Association president), Carol Frankhouser (Association secretary) and Defendant Michael J. Helpa (director) June 18, 2008 via certified mail-restricted delivery to their respective residences pursuant to Rule § 2-121(a)(3) (“Mailed Service”). (Exhibit C)

9. Plaintiff certifies under penalty of perjury that Defendant Angell was served process June 18, 2008 via certified mail-restricted delivery to her place of employment at Defendant Comanco’s Crofton office (also, “Mailed Service”).

10. An email conversation between Defendant Board Members 6/19/08 – 6/20/08 discussed whether the Board could lawfully meet because “In my opinion, Chris’s lawsuit has stymied all actions/normal business that would typically be addressed by the board.” (Defendant Frankhouser email, Exhibit D) Defendant Marek agreed, noting that “This lawsuit brings up the question of whether we can legally act as a Board or not.” (Defendant Marek email, Exhibit D) Defendant Helpa indicated Defendants’ knowledge that they are defendants in the instant Complaint when he wrote, “However, depending on the advice we will receive from our attorney, as defendants in the lawsuit, the meeting can proceed or be cancelled.” [emph. added] (Defendant Helpa email, Exhibit D)

11. Additionally, an unsigned flyer distributed throughout the 122-unit Charing Cross community on July 6, 2008 purports to be from—neither is it denied by—

Defendants. In the flyer, Defendant Board Members acknowledge themselves as Defendants knowledgeable of the Complaint and thus to have been informed in a manner reasonably calculated to give actual notice. (Flyer, emails, Exhibit E)

12. However, Plaintiff certifies under penalty of perjury that Defendant Board Members and Defendant Angell willfully and intentionally refused and evaded Mailed Service (*infra*, at 13-18).

DEFENDANT MICHAEL J. HELPA

13. The United States Postal Service (“USPS”) attempted unsuccessfully to deliver Mailed Service (*supra*, at 8). USPS then attempted to deliver same at 9.53AM June 30, 2008, but Defendant Helpa refused the envelope containing process even though he had ample information to reasonably infer its contents, thereby evading service of process. USPS then returned 3.04PM on the same day said envelope to Plaintiff’s residence, marked “REFUSED 6/30” (Exhibit F)

DEFENDANTS KATHLEEN MAREK, JOSEPH R. DESANTIS AND CAROL FRANKHOUSER (ASSOCIATION OFFICERS)

14. USPS attempted unsuccessfully to deliver Mailed Service to these individuals and Association officers (*supra*, at 8). Defendants Marek, DeSantis and Frankhouser failed and refused to pick up, or allow delivery of, the certified-restricted delivery package even though they had ample information to reasonably infer its contents and thereby evaded service of process. USPS notified Plaintiff of return of said packages July 9, 2008. (Exhibit F)

DEFENDANT RUTH ANGELL

15. Plaintiff received this certified-restricted delivery return-receipt via U.S. Mail June 19, 2008, noted it was not signed by Defendant Angell (Exhibit B), and discussed the matter in person with Postmaster Chris Vaeth (“the Postmaster”) and Customer Service Supervisor Cheryl Edwards at USPS, Crofton branch, 1296 Cronson Blvd., Crofton, MD 21114, 410-721-5861 on June 20, 2008, who provided the following information:

a. Defendant Comanco has a standing relationship with USPS such that all mail—including certified mail—is picked up at the Crofton post office by B. Triggs, an employee of Defendant Comanco authorized to pick up all its mail.

b. The Postmaster admitted it was improper for USPS to release the certified-restricted delivery to a person (B. Triggs) other than Defendant Angell. Supervisor Edwards told Plaintiff she would go to Comanco that same day and ask Defendant Angell to sign for the package.

16. On Friday, June 28, 2008 the Postmaster told Plaintiff in person that he was awaiting a phone call from Defendant Comanco’s owner or other appropriate manager regarding the disposition of the certified-restricted delivery package.

17. On Monday, June 30, 2008 the Postmaster and Supervisor Edwards provided Plaintiff, in person, upon information and belief, additional information, as follows:

a. Following Plaintiff’s Friday, June 20, 2008 complaint regarding the improper signature on the certified-restricted delivery package, Supervisor Edwards went the same day to Defendant Comanco’s office seeking

Defendant Angell's signature for the certified-return receipt package, but Defendant Angell was out to lunch.

b. On Monday, June 23, 2008 Supervisor Edwards attempted a second time to obtain Defendant Angell's signature. Defendant Angell refused to meet Supervisor Edwards in person in Defendant Comanco's lobby and spoke only via telephone through the receptionist on duty, who then relayed Defendant Angell's words to Supervisor Edwards who was standing at the receptionist's desk. In this manner, Defendant Angell refused to sign for the certified-restricted delivery package; said she did not want the package; said she wanted to speak to an attorney first; said only the company owner or other appropriate manager could deal with the package.

c. In the same manner as above, Defendant Angell attempted to return the package to Supervisor Edwards. On inspection, Supervisor Edwards observed the package had been opened already and then re-taped shut, and refused the return. Defendant Angell denied the package had been opened.

d. On Friday, June 28, 2008 the Postmaster and Supervisor Edwards attempted to speak in person with Comanco's owner or other appropriate manager to obtain Defendant Angell's signature, without success.

18. Hence, Defendant Angell refused and evaded service of process. However, upon information and belief, it is easily inferred that Defendant Angell either read the Mailed Service or read the Complaint served through her on the Association and Agent June 17, 2008 and was aware of the contents of the Mailed Service, else she would not have spoken as she did (*supra*, at 17.b).

ARGUMENT

19. A valid judicial proceeding ordinarily cannot be had against a person until the person has been notified of the proceeding by proper process, unless notice by this formal means is waived. (Lohman v. Lohman, 331 Md. 113, 130, 626 A.2d 384 (1993); Little v. Miller, 220 Md. 309, 315, 153 A.2d 271 (1959)) The principal object or purpose of initial process is to give the court jurisdiction over the defendant and to afford the defendant an opportunity to be heard with respect to the claim. (Mooring v. Kaufman, 297 Md. 342, 351, 466 A.2d 872 (1983)) If Defendants make service of process impossible by evasion, they thwart these purposes.

20. Service by mail requires that the defendant receive the process. (Paul V. Niemeyer and Linda M. Schuett, Maryland Rules Commentary 94 (2d ed. 1992); See also Rule 2-124(a))

21. But there is no right to refuse service of process. “The avoidance of authorized service of proper process by a wilful act or refusal to act on the part of the defendant would create an intolerable situation and should not be permitted.” (Merriott v. Whitsell, 476 S.W. 2d 230, 231(Ark. 1972) [citing Creadick v. Keller, 35 Del. 169, 160 A. 909 (1932)])

22. When service is effected by certified mail or registered letter as provided by statute, the courts are virtually unanimous in holding that service of process is not defeated by the defendant’s refusal to accept a certified or registered letter. (Patel v. Southern Brokers, Ltd., 277 S.C. 490, 289 S.E.2d 642 (S.C. 1982))

A person may not deny personal service on the grounds of lack of delivery where the delivery was deliberately prevented by the action of

the person to be served. . . . Where a statute provides for service by registered or certified mail, the addressee cannot assert failure of service when he willfully disregards a notice of certified mail delivered to his address under circumstances where it can be reasonably inferred that the addressee was aware of the nature of the correspondence. (*Hankla v. Governing Board of Roseland Sch. Dist.*, 46 Cal. App. 3d 644, 120 Cal. Rptr. 827, 834 (Cal. Ct. App. 1975))

23. Refusal of service of process by a defendant in an action can result in entry of a default judgment against that defendant. (*Huffer v. Cicero*, 107 Ohio App. 3d 65, 667 N.E. 2d 1031 (Ohio Ct. App. 1995); See also Rule § 2-114(b)(7))

24. “Evasion” is “the act of eluding, dodging or avoiding.” (Black’s Law Dictionary 554 (6th ed. 1990). See also *Aglin v. Nasif*, 46 So. 2d 309, 311 (La. 1950)).

25. The facts demonstrate Defendants were aware of the contents of the Mailed Service. By refusing said service Defendants evaded it.

26. “Substituted service” is a form of service that may be used in lieu of personal service. (72 C.J.S. Process §51) Rule § 2-121(b) and (c) allows substitution of service when it can be demonstrated a defendant has “acted to evade service.”

27. Rule § 2-124(b) requires that service upon an individual be made upon that individual or “an agent authorized by appointment or by law to receive service of process for the individual.”

28. Defendant Comanco is just such an “agent authorized by appointment or by law” pursuant to Rule § 2-124(d), § 1-202(r) and its contract with the Association: “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.” [emph. added] (*supra*, at 7) Association directors’ residences and

places of employment are not public knowledge; Defendant Board Members' usual place for receiving mail, coordinating legal proceedings and all matters is at and through the Agent. Thus, it is proper for Plaintiff to serve Defendant Board Members either at their residences or through the Agent (particularly when service to said residences is evaded).

29. It is reasonable and proper for the Agent to accept service of process on behalf of Defendant Angell because that is her place of employment. (*supra*, at 5)

30. Defendants were first notified and made aware June 17, 2008 that Plaintiff was attempting to serve process on all parties (*supra*, at 6) both by Plaintiff's email (*supra*, at 3) and Defendant Comanco's contractual duty to inform Defendants of the Delivered Service.

31. The June 19-20, 2008 email conversation among Defendant Board Members (*supra*, at 10) documents they were aware and reasonably notified of Plaintiff's Complaint against them on June 19, 2008, two (2) days after filing. That all five individual Defendants refused Mailed Service supports the inference that Defendants are colluding and conspiring, on their own or with advice, to evade service of process upon each of themselves as required by Rule § 2-124(b) and to, as well, stymie service of process upon the Association through its officers pursuant to Rule § 2-124(d).

32. Given the above, it is reasonable to infer Defendants were sufficiently aware that Plaintiff's June 18, 2008 mailings most likely contained service of process, and were sufficiently aware of Plaintiff's Complaint by the Delivered Service in a manner "reasonably calculated to give actual notice" (Rule § 2-121). Indeed, to voice an

opinion in their June 19-20, 2008 emails as to how Plaintiff's complaint affected the Board's legal status, its ongoing activities and that Defendant Board Members were defendants supports the inference that Defendants have each read or informed one another sufficiently for Defendants to be aware of and to comprehend the June 17, 2008 service of process.

33. Additionally, Defendant Board Members plainly acknowledge their status as Defendants, took legal actions in their own and the Association's defense, and notified homeowners the Association and its individual board members had been duly served (flyer, *supra*, at 11). Hence, to all practical effect—and notwithstanding that service of process is not defeated by evasion—they accepted the Delivered Service as proper and actual notification, or else thereby waived service of process upon the Association and/or themselves.

34. On June 30, 2008 Defendant Helpa refused Mailed Service. Defendants Marek, DeSantis and Frankhouser failed and refused to accept delivery of Mailed Service by leaving it unclaimed. Thus, Defendant Board Members evaded service of process.

35. Moreover, Defendants refuse to accept any postal mail from Plaintiff, making any attempt by Plaintiff to serve Defendants impossible to pursue without relief by this Court. (Exhibit F and G)

36. The facts suggest Defendants' willful and sustained efforts to evade service of process strongly support the inference that delivery of service by other means will be equally ineffective and that Defendants may also evade service of this Motion.

37. Summary relief is proper where the moving party establishes the case is clear and free from doubt, there are no genuine issues of material fact to be tried, and the movant is entitled to judgment as a matter of law. *Detar v. Beard*, 898 A.2d 26 (Pa. Cmwlth. 2006).

38. There are no genuine issues of material fact, including Defendants' refusal of Mailed Service and that such refusal constitutes evasion of service. Thus, there is no cause for this Court to deny Plaintiff expedited summary relief as requested herein.

39. Under FED. R. CIV. P. 4(d)(2)(G) Plaintiff requests the Court shift to Defendants the costs of service already made and fees involved in preparing and serving the instant Motion.

40. Plaintiff also requests this Court grant other necessary and additional relief.

WHEREFORE, Plaintiff respectfully requests that this Court grant Plaintiff's Affidavit And Motion to Substitute Service of Process, Affirm Sufficiency of Evaded Service of Process and Expedited Summary Relief.

Respectfully Submitted,

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 Affidavit and Motion to Substitute Service Of Process, Affirm Sufficiency of Evaded Service of Process and Expedited Summary Relief—including Plaintiff's affidavit certifying the above-named Defendants were lawfully served and refused and evaded said service—is true and correct to the best of my knowledge, information and belief.

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