

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW JERSEY

Susan M. Carmen v. Spirit Airlines

Carmen v. Spirit Airlines · No. Civil Action No. 24-4612 · Decided December 31, 2025

SUMMARY

The United States District Court for the District of New Jersey denied Plaintiff Susan M. Carmen’s motion for summary judgment and granted Spirit Airlines’ motion to dismiss for insufficient service of process. The action was dismissed without prejudice because service on a Spirit Airlines ticket agent at Newark Liberty International Airport was not shown to comply with Federal Rule of Civil Procedure 4 or New Jersey law.

CASE DETAILS

COURT	United States District Court for the District of New Jersey
WRITING FOR THE COURT	Jamel K. Semper
JURISDICTION	United States District Court for the District of New Jersey
DECIDED	December 31, 2025
DOCKET	Civil Action No. 24-4612
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff moved for summary judgment, and Defendant moved to dismiss for insufficient service of process under Federal Rule of Civil Procedure 12(b)(5). The district court denied Plaintiff's motion and granted Defendant's motion, dismissing the action without prejudice under Rule 4(m).
STANDARD OF REVIEW	On summary judgment, the movant must show that there is no genuine dispute of material fact and that the movant is entitled to judgment as a matter of law, with facts and reasonable inferences construed in favor of the nonmoving party. On a Rule 12(b)(5) motion, the party asserting valid service bears the burden of proof, and the court has broad discretion in evaluating service.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

- service of process
- motions to dismiss
- summary judgment
- civil procedure

PRACTICE AREAS

civil procedure

service of process

summary judgment

QUESTIONS PRESENTED

1. Whether Plaintiff was entitled to summary judgment based on Defendant's alleged failure to answer the Complaint.
2. Whether service of process was effective when the summons and Complaint were delivered to a ticket agent at an airport without evidence that the agent was authorized to accept service for Spirit Airlines.
3. Whether the action should be dismissed under Federal Rule of Civil Procedure 4(m) because Defendant was not served within 90 days after the Complaint was filed.

HOLDINGS

1. Plaintiff was not entitled to summary judgment because she failed to demonstrate the absence of genuine disputes of material fact and her motion was procedurally improper.
2. Service was insufficient because Plaintiff offered no evidence that the ticket agent was appointed by Spirit Airlines or otherwise authorized to accept service of process.
3. Dismissal without prejudice was warranted because Defendant had not been served within 90 days after the Complaint was filed.

KEY QUOTATIONS

“Plaintiff’s Motion for Summary Judgment is hereby DENIED and Defendant’s Motion to Dismiss is hereby GRANTED without prejudice.” (Section IV)

FACTUAL BACKGROUND

Plaintiff alleged that Spirit Airlines removed her and her health aide from a flight after she fell asleep before departure and disclosed her epilepsy. She alleged that, after traveling to the New York area on another airline and using New Jersey Transit to return to New Jersey, she fell on moving stairs and broke her shoulder. Plaintiff attempted service at an Atlanta airport address, which was returned unexecuted, and later claimed service by delivering the summons and complaint to a Spirit ticket agent at Newark Liberty International Airport.

PROCEDURAL HISTORY

Plaintiff filed suit on April 5, 2024, and was granted leave to proceed in forma pauperis. Service attempted through the U.S. Marshals at an airport address was returned unexecuted, and Plaintiff later claimed service by delivering the summons and complaint to a ticket agent at Newark Liberty International Airport. Defendant moved to dismiss for insufficient service of process, while Plaintiff moved for summary judgment based on Defendant's alleged failure to answer. The court denied summary judgment and dismissed the action without prejudice because Plaintiff failed to show that the ticket agent was authorized to accept service and service was not completed within 90 days.

DISPOSITION

dismissed

CASES CITED

- In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1426 (3d Cir. 1997)
- Fowler v. UPMC Shadyside, 578 F.3d 203, 210-11 (3d Cir. 2009)
- Marcinek v. Commissioner, 467 F. App'x 153, 154 (3d Cir. 2012)
- Kreschollek v. S. Stevedoring Co., 223 F.3d 202, 204 (3d Cir. 2000)
- Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 247-48, 248 (1986)
- Boyle v. County of Allegheny, 139 F.3d 386, 393 (3d Cir. 1998)
- Peters v. Delaware River Port Authority of Pennsylvania & New Jersey, 16 F.3d 1346, 1349 (3d Cir. 1994)
- Celotex Corp. v. Catrett, 477 U.S. 317, 322-23, 325 (1986)
- Matsushita Electric Industrial Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)
- Lujan v. National Wildlife Federation, 497 U.S. 871, 888 (1990)
- Katz v. Aetna Casualty & Surety Co., 972 F.2d 53, 55 (3d Cir. 1992)
- Grand Entertainment Group v. Star Media Sales, 988 F.2d 476, 488 (3d Cir. 1993)
- Umbenhauer v. Woog, 969 F.2d 25, 30 (3d Cir. 1992)
- Ramada Worldwide Inc. v. Shriji Krupa, LLC, 2013 WL 1903295 (D.N.J. Apr. 17, 2013)
- West v. American Honda Motor Co., No. 08-700, 2008 WL 4104683, at *4 (D.N.J. Aug. 28, 2008)
- United States v. Marple Community Record, Inc., 335 F. Supp. 95, 101 (E.D. Pa. 1971)

OPINION

CARMEN

PER CURIAM.

NOT FOR PUBLICATION

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

SUSAN M. CARMEN,

Plaintiff, Civil Action No. 24-4612 v.

SPIRIT AIRLINES,

OPINION

Defendant. December 31, 2025 SEMPER, District Judge. THIS MATTER comes before the Court on pro se Plaintiff Susan M. Carmen's Motion for Summary Judgment (ECF 18, "MSJ")¹ and Defendant Spirit Airlines' Motion to Dismiss the Complaint for Insufficient Service of Process (ECF 12-1, "Motion to Dismiss" or "MTD"). Defendant opposed the Motion for Summary Judgment. (ECF 19, "Opp. to MSJ.") Plaintiff opposed the Motion to Dismiss (ECF 14, "Opp. to MTD") and Defendants replied in support of the Motion to Dismiss (ECF 15, "Reply ISO MTD"). The Court has decided the motions without oral argument pursuant to Federal Rule of Civil

Procedure 78 and Local Civil Rule 78.1. For the 1 Plaintiff filed the Motion for Summary Judgment as a “Motion in Opposition to Defendant Motion to Dismiss and Request for Time... Coupled with the Plaintiff Motion for Summary Judgment.” (ECF 18.) For the purpose of clarity, the Court refers to this filing simply as the “Motion for Summary Judgment.” 2 Defendant maintains that it has been improperly sued as “Spirit Airlines” rather than “Spirit Airlines, LLC.” (MTD at 1.) For the purpose of consistency, the Court will refer to Defendant as “Spirit Airlines.” reasons set forth below, Plaintiff’s Motion for Summary Judgment is DENIED and Defendant’s Motion to Dismiss is GRANTED.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY³

This case arises from an injury Plaintiff allegedly sustained after a series of events beginning with her ejection from a Spirit Airlines flight. Specifically, Plaintiff, a Newark, New Jersey resident who avers that she is “severely handicapped with epilepsy chronic seizure disorder,” alleges that on May 26, 2023, she boarded a Spirit Airlines flight from Atlanta, Georgia to Newark Liberty International Airport in New Jersey, and fell asleep in her seat before the plane departed from the gate. (ECF 1 at 3, “Complaint” or “Compl.”; ECF 1-2 at 5, “IFP Application.”) Plaintiff alleges that she was roused shortly thereafter by a Spirit Airlines flight attendant who informed her that she “could not sleep while flying,” prompting her health aide, one Dereck Dillard, to intervene and notify the flight attendant of Plaintiff’s medical condition. (Compl. at 3.) Plaintiff alleges that she and Mr. Dillard were “forced” off the plane and that they had to purchase flights to the New York metropolitan area with another airline. (Id.) Plaintiff alleges that she and her health aide had to fly to LaGuardia Airport in Queens, New York. (Id.) Plaintiff further alleges that, to get back to New Jersey, she and Mr. Dillard had to take New Jersey Transit, which she alleges featured “moving stairs.” (Id.) Plaintiff alleges that while on these “moving stairs,” she “fell down the stairs and [broke] [her] shoulder.” (Id.) Plaintiff alleges that her shoulder “cannot 3 The facts and procedural history are drawn from the Complaint (ECF 1). See *In re Burlington Coat Factory Sec. Litig.*, 114 F.3d 1410, 1426 (3d Cir. 1997). For the purposes of a motion to dismiss, the facts drawn from the complaint are accepted as true. See *Fowler v. UMPC Shadyside*, 578 F.3d 203, 210-11 (3d Cir. 2009). The Court construes Plaintiff’s pro se filings liberally. See *Marcinek v. Comm’r*, 467 Fed. Appx. 153, 154 (3d Cir. 2012) (holding that courts are “under an obligation to liberally construe the submissions of a pro se litigant”). be repaired due to [her] epilepsy and all [her] medicines” and that “the doctor said the pain from healing after surgery might be too much for [her]” such that the doctor allegedly refused to operate on her injured shoulder. (Id. at 4.) On April 5, 2024, Plaintiff filed the instant lawsuit. (See generally id.) Plaintiff seeks “10 million dollars and all medical treatment paid because [Defendant] put [her] off the plane under color of law, and by doing so created the situation” that led to her injuries, as she “had no business in New York in the first place.” (Id. at 4.) On April 15, 2024, the Court granted Plaintiff’s application to proceed in forma pauperis and ordered the U.S. Marshal to serve copies of the Complaint and summons on Defendant, as directed by Plaintiff. (ECF 5.) On April 23, 2024, Plaintiff filled out the summons

form and listed the party to be served as “Spirit Airlines” and the address at which service was to be made at “6000 N. Terminal Pkwy, Atlanta, GA 30320,” which is the address of Hartsfield-Jackson Atlanta International Airport. (ECF 9 at 1.) On April 29, 2024, the U.S. Marshals returned the summons unexecuted as to Spirit Airlines, with Deputy U.S. Marshal C. Johnson noting on the form that this was due to a “wrong address.” (Id. at 2.) Nearly a year later, on April 14, 2025, Plaintiff filed a Proof of Service stating that Spirit Airlines had been served on April 3, 2025 at 12:51 P.M. by delivering copies of the Complaint and summons to a “ticket agent” named “Emma” at Newark Liberty International Airport, with Mr. Dillard and another individual acting as process servers. (ECF 10.) Ten days later, on April 24, 2025, Defendant filed a corporate disclosure statement (ECF 11) and the instant Motion to Dismiss for Insufficient Service of Process (MTD). On April 25, 2025, Plaintiff filed her Opposition to the Motion to Dismiss. (Opp. to MTD.) On May 12, 2025, Defendant filed its Reply in support of the Motion to Dismiss. (Reply ISO MTD.) On May 27, 2025, Plaintiff filed the Motion for Summary Judgment (MSJ), and Defendant filed its Opposition to the Motion for Summary Judgment on June 23, 2025 (ECF 19, “Opp. to MSJ”). On September 30, 2025, Defendant filed a notice of suggestion of bankruptcy, notifying the Court that Spirit Airlines had initiated Chapter 11 bankruptcy proceedings in the Southern District of New York. (ECF 20.)

II. LEGAL STANDARD

Federal Rule of Civil Procedure 56(a) provides that summary judgment should be granted if the movant shows that “there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” *Kreschollek v. S. Stevedoring Co.*, 223 F.3d 202, 204 (3d Cir. 2000); see also *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In deciding a motion for summary judgment, a court must construe all facts and inferences in the light most favorable to the nonmoving party. See *Boyle v. Cnty. of Allegheny Pa.*, 139 F.3d 386, 393 (3d Cir. 1998) (citing *Peters v. Del. River Port Auth. of Pa. & N.J.*, 16 F.3d 1346, 1349 (3d Cir. 1994)). The moving party bears the burden of establishing that no genuine issue of material fact remains. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986). “[W]ith respect to an issue on which the nonmoving party bears the burden of proof . . . the burden on the moving party may be discharged by ‘showing’ — that is, pointing out to the district court — that there is an absence of evidence to support the nonmoving party’s case.” Id. at 325. Once the moving party has met that threshold burden, the non-moving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Elec. Indus. Co., Ltd. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986). A fact is only “material” for purposes of a summary judgment motion if a dispute over that fact “might affect the outcome of the suit under the governing law.” *Anderson*, 477 U.S. at 248. A dispute about a material fact is “genuine” if “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Id. Unsupported allegations, subjective beliefs, or argument alone, however, cannot forestall summary judgment. See *Lujan v. Nat’l Wildlife Fed’n*,

(1988) (nonmoving party may not successfully oppose summary judgment motion by simply replacing “conclusory allegations of the complaint or answer with conclusory allegations of an affidavit.”). Thus, if the nonmoving party fails “to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial. . . . there can be ‘no genuine issue of material fact,’ since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Katz v. Aetna Cas. & Sur. Co.*, 972 F.2d 53, 55 (3d Cir. 1992) (quoting *Celotex*, 477 U.S. at 322-23). Moreover, the “mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact.” *Anderson*, 477 U.S. at 247-48. Federal Rule of Civil Procedure 12(b)(5) permits a defendant to move to dismiss a complaint for “insufficient service of process.” “The party asserting the validity of service bears the burden of proof on that issue.” *Grand Entm’t Group v. Star Media Sales*, 988 F.2d 476, 488 (3d Cir.1993). District courts possess “broad discretion” when evaluating a motion to dismiss for insufficient service of process. See *Umbenhauer v. Woog*, 969 F.2d 25, 30 (3d Cir.1992). “Where a plaintiff acts in good faith, but fails to effect proper service of process, courts are reluctant to dismiss an action.” *Ramada Worldwide Inc. v. Shriji Krupa, LLC*, 2013 WL 1903295 (D.N.J. Apr.17, 2013). “Rather, courts will elect to quash service and grant plaintiff additional time to properly serve the defendant.” *Id.* Federal Rule of Civil Procedure 4(h)(1) provides that a corporation may be served with process “(A) in the manner prescribed by Rule 4(e)(1) for serving an individual; or (B) by delivering a copy of the summons and of the complaint to an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process and—if the agent is one authorized by statute and the statute so requires—by also mailing a copy of each to the defendant.”

III. ANALYSIS

The Court will address each pending Motion in turn, beginning with Plaintiff’s Motion for Summary Judgment. a. Motion for Summary Judgment In her Motion for Summary Judgment, Plaintiff argues that Defendant has not timely answered her Complaint and that, as such, “Defendants [sic] are in complete agreement as to all...the allegations made by the Plaintiff.” (MSJ ¶ 1.) Plaintiff states that “it certainly appears that the Defendant has done all they could to avoid service” and requested that “with good cause shown, the Plaintiff request and order [sic] for summary judgment with prejudice without any further delay.” (*Id.* ¶ 4.) Defendant argues that “Plaintiff’s Motion should be denied because Plaintiff fails to articulate any basis for her entitlement to summary judgment in this case and the Motion is procedurally improper.” (*Opp.* to MSJ at 2.) Defendant further argues that “Plaintiff incorrectly asserts that Spirit Airlines did not respond to Plaintiff’s Complaint and purportedly has admitted to Plaintiff’s allegations[,]” noting that Defendant responded to the Complaint by moving to dismiss it. (*Id.*) Defendant also argues

that “Plaintiff’s assertion that Spirit Airlines has attempted to avoid service is demonstrably false[,]” as “Plaintiff initially attempted to effect service...at Atlanta Airport[,]” and then[,] “[r]ather than attempting to effect service on Spirit Airlines’ headquarters at the address provided by the U.S. Marshall’s [sic] Service, Plaintiff attempted to effect service...at a different airport by serving a ‘ticket agent[.]’” (Id. at 2-3.) Finally, Defendant argues that Local Civil Rule 56.1 mandates the Motion for Summary Judgment’s dismissal because the Motion was unaccompanied by a statement of material facts not in dispute. (Id. at 3.) Defendant carries the day on this Motion. Plaintiff has identified no salient facts that could support the notion that there is no genuine dispute of material fact in this case. The dispute in this case is very much alive, and Defendant, in moving to dismiss the case, has made it clear that they do not accept any of the allegations as true. The Motion for Summary Judgment must be denied because it does not carry its burden of demonstrating that there are not genuine factual disputes in this case, and because it is procedurally improper, as it has been filed before the parties have engaged in any discovery and, as Defendant pointed out, the Motion is not accompanied by the necessary statement of material facts not in dispute.⁴ For these reasons, the Motion for Summary Judgment is DENIED.

b. Motion to Dismiss In its Motion to Dismiss, Defendant argues that “Plaintiff has not demonstrated, nor could she demonstrate, any evidence that ‘Emma’ [the ticketing agent at Newark Liberty Airport] is an appropriate recipient of service under any relevant rule.” (MTD at 5.) Plaintiff argues that both federal and New Jersey law require the recipient of the complaint and summons to be someone specifically authorized to accept service in order for service to be deemed legally sufficient. (Id. at 5-7.) Plaintiff’s Opposition to the Motion to Dismiss largely reiterates the allegations set forth in her Complaint without materially responding to Defendant’s arguments regarding insufficiency.

4 Local Civil Rule 56.1 provides that “[o]n motions for summary judgment, the movant shall furnish a statement which sets forth material facts as to which there does not exist a genuine issue[.] [...] A motion for summary judgment unaccompanied by a statement of material facts not in dispute shall be dismissed.” of service of process. (See generally Opp. to MTD.) In its Reply, Defendant notes this lack of response and argues that the Motion should be granted because Plaintiff “has failed to properly effect service on Spirit Airlines pursuant to either the Federal Rules of Civil Procedure or applicable New Jersey Law. (Reply ISO MTD at 2.) Here again, Defendant carries the day. It has long been established in the Third Circuit that “[i]n order for service of process upon an agent to be effective, it must be shown that the agent was actually appointed by the defendant for the specific purpose of receiving process.” *West v. Am. Honda Motor Co.*, No. 08-700, 2008 WL 4104683, at *4 (D.N.J. Aug. 28, 2008) (citing *U.S. v. Marple Community Record, Inc.*, 335 F.Supp. 95, 101 (E.D.Pa.1971)). The requirements for effective service under New Jersey law largely mirror those under federal law. See N.J. Ct. R. 4:4-4(5), R. 4:4-4(6) (designating officers, directors, trustees, managing agents, and general agents as proper recipients of service of process). Plaintiff offers no facts or arguments that suggest that Emma the ticketing agent was appointed by Spirit Airlines—or otherwise authorized—to accept

service of process. Accordingly, the Motion to Dismiss for Insufficient Service of Process is GRANTED. Pursuant to Federal Rule of Civil Procedure 4(m), and because Defendant has not been served within 90 days of the filing of the Complaint, the Court dismisses the action without prejudice.

IV. CONCLUSION

For the reasons stated herein, Plaintiff's Motion for Summary Judgment is hereby DENIED and Defendant's Motion to Dismiss is hereby GRANTED without prejudice. An appropriate order follows. /s/ Jamel K. Semper .

HON. JAMEL K. SEMPER

United States District Judge Orig: Clerk cc: Cari Fais, U.S.M.J. Parties