

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(WEST PALM BEACH DIVISION)**

CASE NO. 09-81088-CIV-HURLEY/HOPKINS
(Ancillary Proceeding to U.S.D.C. Case No. 08-81088-CIV-HURLEY/HOPKINS)

JONATHAN E. PERLMAN, Esq., as court
appointed Receiver of Creative Capital
Consortium, LLC, et al.,

Plaintiff,

v.

GEORGETTE DELISFORT, an
individual

Defendant.

**RECEIVER JONATHAN PERLMAN'S RESPONSE TO DEFENDANT GEORGETTE
DELISFORT'S MOTION TO VACATE CLERK'S DEFAULT**

Plaintiff Jonathan E. Perlman, the court-appointed Receiver (the "Receiver"), by and through undersigned counsel, submits this Response to Defendant Georgette Delisfort's Opposition to Motion for Judgment [D.E. 9] (the "Motion") and states as follows:

1. The Receiver filed a complaint against Georgette Delisfort ("Defendant") on July 27, 2009, seeking the recovery of certain funds transferred to the Defendant from or on behalf of the Receivership Entities in main case styled *Securities and Exchange Commission ("SEC") v. Creative Capital Consortium, LLC, A Creative Capital Concept\$, LLC and George L. Theodule*, Case No. 08-81565-CIV-HURLEY/HOPKINS. [D.E. 1]

2. On November 11, 2009, Berhane Tassaw, the process server engaged by the Receiver to serve the summons and complaint on the Defendant, went to the Defendant's home, personally saw and identified the Defendant, attempted to serve the Defendant by knocking at

the door, was not afforded the ability to hand-deliver to the Defendant the summons and complaint by virtue of Defendant's refusal to open the door, advised the Defendant of the contents of the service and further advised that he was leaving the documents at the door. [D.E. 6]

3. On January 28, 2009, the Receiver moved for the entry a clerk's default due to Defendant's failure to respond to the summons and complaint. [D.E. 7]

4. On January 29, 2010, the Clerk entered a default judgment. [D.E. 8]

5. Federal Rules of Civil Procedure 4 (e) provides that "an individual--other than a minor, an incompetent person, or a person whose waiver has been filed--may be served in a judicial district of the United States by: (1) 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."

5. Under Florida case law, when the Defendant attempts to evade the acceptance of service, due process may be satisfied if the process server leaves the papers at a place from which such person can easily retrieve them and takes reasonable steps to call such delivery to the attention of the person to be served. See *Haney v. Olin Corp.*, 245 So.2d 671 (4th DCA 1971) in which the court stated, "delivery does not require that the copy of summons and complaint be placed in the defendant's hand, nor, for that matter, that the defendant be even physically touched with the suit papers." *Id.* at 674, citing *Roth v. W.T. Cowan, Inc.* 97 F. Supp. 675 (E.D.N.Y. 1951). See also *Liberian v. Commercial National bank of Broward County*, 256 So.2d 63 (4th DCA 1971) (service perfected where process server left paper in the mail box after defendant was observed attempting to evade service) and *Palamara v. World Class Yachts, Inc.*, 824 So.2d

194 (4th DCA 2002) (defendant properly served with notice as he attempted to evade service and was informed of the contents by the process server, who placed the papers on defendant's door).

6. Moreover, the federal courts have held that an intentional refusal to accept service does not invalidate the process. See *Villanova v. Solow*, 1998 WL 643686, E.D.Pa., September 18, 1998 (defendant [s] refusal to open the door does not invalidate plaintiffs' service...personal service need not be face to face or hand to hand); see also *Novack v. World Bank*, 703 F.2d 1305, 1310 n. 14 (D.C.Cir.1983) (“[w]hen a person refuses to accept service, service may be effected by leaving the papers at a location, such as on a table or on the floor, near that person”) (citations omitted); *Federal Fin. Co. v. Longiotti*, 164 F.R.D. 419, 421-22 (E.D.N.C.1996) (service valid where process server left envelope with summons and complaint on defendant's doorstep after his wife refused to accept service); *Periodical Publishers' Serv. Bureau, Inc. v. Keys*, 1992 WL 298003, *6-*7 (E.D.La. Oct.7, 1992) (service valid where process server taped summons and complaint on apartment door after defendant's wife refused to open it).

7. Here the Defendant has attempted to evade service of process by her refusal to answer her door when requested by the process server. Moreover, a copy of the summons and complaint were left at her place of residence in plain view while she was present at the home which the process server clearly vocalized while leaving them there. These actions are sufficient to effectuate proper service of process under state and federal law.

WHEREFORE, the Receiver, respectfully requests that this Court deny Defendant's Motion and for such other relief as the Court may deem just and proper.

Dated: March 1, 2010
Miami, Florida

Respectfully submitted,

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CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that on March 1, 2010, the foregoing document was electronically filed with the Clerk of the Court using CM/ECF and is also being served on Defendant, Georgette Delisfort, 2108 New London Place, Sneville, GA 30078, via regular and Certified U.S. Mail.

/s/ David P. Lemoie
David P. Lemoie, Esq.