

VERMONT SUPERIOR COURT
Environmental Division
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Burlington, VT 05401
802-951-1740
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Docket No. 23-ENV-00026

City of Burlington v. ETA Properties (122-124 Intervale Ave.)

ENTRY ORDER

Title: Motion to for Alternate Method of Service or Enlargement of Time (Motion: 1)

Filer: Kimberlee J. Sturtevant, Esq.

Filed Date: May 26, 2023

No response filed.

The motion is GRANTED.

This is an enforcement action brought by the City of Burlington (City) against Respondent ETA Properties (Respondent) related to certain alleged zoning violations at Respondent's rental property at 122-124 Intervale Avenue, Burlington, Vermont. Respondent is a Florida limited liability company with a Florida address. Because Respondent's property is a rental property, the City requires a Service of Process Contact within Chittenden County, Vermont. The City has represented that said individual is Kelly McGovern of Milton, Vermont.¹ The City, through the the City constable, has attempted to serve Ms. McGovern but has been unable to personally serve her. The City now requests that it be allowed to serve Ms. McGovern through alternative means of service, specifically by attaching service documents to the door of her residence and by email. Alternatively, the City requests an enlargement of time to serve Respondent.

Pursuant to V.R.C.P. Rule 4(d)(1):

The court, on motion, upon a showing that service as prescribed above cannot be made with due diligence, may order service to be made by leaving a copy of the summons and of the complain at the defendant's dwelling house or usual place of abode, or to be made by publication

¹ We note that, while the City has represented that Ms. McGovern is the appropriate contact, it has not provided any exhibit showing that Ms. McGovern is the service contact.

pursuant to subdivision (g) of this rule, if the court deems publication to be more effective.

The City has represented that the constable has called Ms. McGovern twice, once without an answer and once where the phone was hung up upon answer. The constable also went to Ms. McGovern's home to serve her on May 26, 2023, but no one answered the door. At this time, the constable attached the service documents to her door. See City Ex. A. We conclude that the City has made reasonably diligent efforts to serve Ms. McGovern and shown that service as provided in Rule 4 cannot be made with due diligence at this time. Thus, the Court concludes that alternative means of service, through adhering service documents to her place of residence, is appropriate. The Court notes that the City has already done this. See *id.* Having reached this conclusion, the City's motion for enlargement of time to serve Ms. McGovern is **MOOT**.

We further note that on May 26, 2023, the City, through counsel, emailed the service documents to Respondent's member/registered agent, Ms. Elise Peters of Fort Lauderdale, Florida. See City Exs. C, D. Ms. Peters responded that she had received the emails and intended to discuss the matter with the City after June 4, 2023. While email is not specifically listed as an alternative means of service in V.R.C.P. Rule 4(d)(1), this contact indicates that Respondent is aware of the pending action.

For the foregoing reasons, we conclude that the City may serve Ms. McGovern through alternative means, specifically by adhering the service documents to her residence, which it has already done. Thus, we **GRANT** the City's motion for alternative service. In reaching this conclusion, the City's motion for enlargement of time to effectuate service is **MOOT**.

Electronically signed at Burlington, Vermont on Wednesday, June 7, 2023 pursuant to V.R.E.F. 9(D).

A handwritten signature in black ink that reads "Tom Walsh". The signature is stylized and cursive.

Thomas G. Walsh, Judge
Superior Court, Environmental Division