PHILIP BYRD NUMBER 534,129, “B”

VERSUS FIRST JUDICIAL DISTRICT COURT

ELDORADO SHREVEPORT #1, CADDO PARISH, LOUISIANA

L.L.C. and ELDORADO SHREVEPORT

#2, L.L.C d/b/a EL DORADO

CASINO RESORT

**REASONS FOR JUDGMENT ON DECLINATORY EXCEPTION OF**

**INSUFFICIENCY OF SERVICE OF CITATION AND SERVICE OF PROCESS AND MOTION FOR INVOLUNTARY DISMISSAL**

This Court has thoroughly considered the Declinatory Exception of Insufficiency of Service of Citation and Service of Process and Motion for Involuntary Dismissal filed on July 12, 2010 by Defendant, El Dorado Resort Casino Shreveport against Plaintiff, Philip Byrd; Memorandum in Opposition to Defendant’s Declinatory Exception of Insufficiency of Service of Citation and Service of Process and Motion for Involuntary Dismissal filed on September 17, 2010; and applicable law. For reasons which follow, this Court concludes that the Declinatory Exception of Insufficiency of Service of Citation and Service of Process should be sustained and Motion for Involuntary Dismissal should be granted.

This matter arises from an alleged incident which occurred on September 1, 2008 at the El Dorado Resort Casino Shreveport. Plaintiff’s original Petition for Damages and Motion to Proceed as Pauper were filed on August 28, 2009. The Motion to Proceed as Pauper was denied by Judge Roy Brun of this Court on September 3, 2009. The citation was not issued by the Clerk’s office until April 28, 2010. Service was not forwarded to Defendants until June 28, 2010.

La. C.C.P. Art. 1201 provides, “service of the citation shall be requested on all named defendants within ninety days of commencement of the action.” Louisiana courts have found that the purpose of this article is to “insure that the defendant receives notice of the suit within a reasonable time after it has been commenced.” *Hugh Eymard Towing, Inc. v. Aeroquip Corp.*, 776 So. 2d 472, 473 (La. App. 5 Cir. 2000). In situations, such as the case at bar, where a plaintiff is responsible for mailing service via the long-arm statute[[1]](#footnote-1), this purpose may be thwarted if the plaintiff is only required to request service within ninety days but not actual mail service. *Id*. Therefore, when a plaintiff has an obligation to issue the citation to defendants under the long-arm statute, the plaintiff must “mail the citation and petition within ninety days of commencement of the action.” *Id*; *Reed v. Norfolk-Southern Ry. Co.*, 817 So. 2d 321 (La. App. 4 Cir. 2002); *Hutchinson v. Dollar General Corp.*, 2008 WL 1803778 (M.D. La. 2008).

In the case at bar, it is obvious that service was not requested until April 28, 2010 and not sent until June 28, 2010. This is outside of the ninety-day window provided by statute. In *Hugh Eymard Towing*, the suit was filed on April 1, 1998 and service was mailed by plaintiff’s counsel on July 6, 1999. While this is an extraordinarily long time between filing and mailing of service, the 5th Circuit relied upon the rule that service must be mailed within ninety days of commencement of the action. In *Anderson v. Norfolk Southern Ry. Co.* the plaintiff did not mail service until ninety-three days after the filing of the suit. The Court found that this exceeded the requirement of La. C.C.P. 1201 and dismissed the suit without prejudice. 814 So. 2d 659 (La. App. 4 Cir. 2002). There has been no showing of any reason, much less good cause, for the delay in the mailing of service to Defendant.

If service is not requested within the prescribed time period, a judgment dismissing the action without prejudice shall be rendered. La. C.P.P. Art. 1672. For the above reasons, this Court finds that service was not mailed within the ninety day period prescribed by law. Accordingly, the Declinatory Exception of Insufficiency of Service of Citation and Service of Process is sustained and Motion for Involuntary Dismissal is granted.

Counsel shall submit a formal Judgment in accordance with La. Dist. Ct. R. 9.5.

Signed this 29th day of September 2010 in Shreveport, Caddo Parish, Louisiana.

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SCOTT J. CRICHTON

DISTRICT JUDGE

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1. La. R.S. 12:3204 [↑](#footnote-ref-1)