IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

BROADCAST MUSIC, INC.;   )
COTILLION MUSTIC, INC.;   )
TERRY STAFFORD MUSIC CO.;   )
BEECHWOOD MUSIC CORPORATION;   )
WARNER-TAMERLANE PUBLISHING   )
CORP.;   )
JEFF STEVENS MUSIC;   )
RANCHO BELITA MUSIC;   )
VELVET APPLE MUSIC;   )
RONDOR MUSIC INTERNATIONAL, INC.,   )
d/b/a IRVING MUSIC;   )
TOKECO TUNES;   )
WACISSA RIVER MUSIC, INC.   )
)
)
                  Plaintiffs,   )
)
v.   )   Case No. 4:19-CV-00395-TCK-FHM
)
EL SUPER CORRAL CO., d/b/a   )
RODEO NIGHTCLUB; and   )
ARNULFO MURRILO, a/k/a   )
ARNULFO MURILLO, JR,   )
)
)
                  Defendants.   )

<u>ORDER</u>

Before the Court are Plaintiffs' Motion to Allow Service by Alternate Means (Doc. 21), Second Motion to Allow Service by Alternate Means (Doc. 22) and Second Motion to Extend Time for Service (Doc. 24). In the Motion to Allow Service by Alternate Means, Plaintiffs asked that they be allowed to serve defendant Arnulfo Murillo by delivering a copy of the summons and complaint to an employee of Rodeo Nightclub at the nightclub's regular business of 9379 E. 46th Street, Tulsa, Oklahoma. Doc. 21. In the Second Motion to Allow Service by Alternate Means, Plaintiffs requested permission to serve defendants by serving their counsel of record, Joseph T.

Howard, in a civil action pending in the District Court of Tulsa County, Case No. CV-2019-01448,

El Super Corral Co., Maria Sanchez, and Arnulfo Murillo v. City of Tulsa, ex rel. INCOG.   Doc.

24.

A review of the record indicates that Plaintiffs initially attempted to serve Murillo and El

Super Corral by certified mail, and thereafter by process server. Doc. 22-6, Affidavit of Stacey S.

Chubbuck. The certified mail was returned with the notation, "UNCLAIMED UNABLE TO

FORWARD." Doc. 24-2 at 2. The process server has made 17 attempts to serve Defendants at

Murillo's home address and various business addresses, and the process server commented in his

report that Murillo "is clearly avoiding service." *Id.* at 8-9.[1]

Pursuant to Fed. R. Civ. P. 4(e)(1), an individual may be served in a judicial district of the

United States by "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."

Oklahoma law regarding service on defendants in civil cases provides:

> [i]f service cannot be made by personal delivery or by mail, a [corporate or
> individual] defendant may be served as provided by court order in a manner which
> is reasonably calculated to give the defendant actual notice of the proceedings and
> an opportunity to be heard and upon filing an affidavit by the plaintiff or plaintiff's
> attorney that with due diligence service cannot otherwise be made upon the
> defendant.

12 O.S. § 2004(C)(6).

As the affidavit of Plaintiffs' counsel of record, Stacey S. Chubbuck, establishes, Murillo

has gone to extraordinary lengths to avoid service. Doc. 22-6. In light of this, the Court concludes

that service of process on defendants' attorney in the Tulsa County case is reasonably calculated

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[1] To date, Plaintiffs have incurred charges of $705 in their unsuccessful attempt to serve
Defendants. Doc. 22-3.

to give defendants notice of this action and an opportunity to be heard. Accordingly, the Court grants Plaintiffs' Second Motion to Serve Defendants by Alternative Means. Doc. 22.

Having granted this motion, the Court finds that Plaintiffs' earlier Motion for Service by Alternative Means (Doc. 21) is moot.

In their third motion Plaintiffs seek an additional 90 days to serve defendants. Doc. 24.[2] In light of Defendants' ongoing efforts to avoid service, the Court concludes this motion should be granted. Accordingly, Plaintiffs' deadline to obtain service of process on Defendants is extended to April 20, 2020.

ENTERED this 23rd day of January, 2020.

TERENCE C. KERN
United States District Judge

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[2] On October 22, 2019, the Court granted Plaintiffs' first Motion to Extend Time for Service, extending the deadline for service to January 20, 2020. Doc. 20.