



COPYRIGHT CLAIMS BOARD

Docket number: 23-CCB-0383

March 1, 2024

Catalina Jaramillo

CLAIMANT

v.

Sebastian Xibille Lugo

RESPONDENT

ORDER DISMISSING CLAIM

On November 11, 2023, claimant Catalino Jaramillo (Jaramillo) filed this copyright infringement claim before the Copyright Claims Board (Board) against respondent Sebastian Xibille Lugo. Dkt. 1. The Board found the claim compliant and issued a Notice of Compliance and Direction to Serve on November 17, 2023. Dkt. 4. A claimant has 90 days after receiving the Notice of Compliance to file a proof of service or waiver of service form with the Board. 17 U.S.C. § 1506(g); 37 C.F.R. § 222.5(b)(3)(i), (c)(5). “If a claimant fails to complete service . . . within that 90-day period, the Copyright Claims Board shall dismiss the proceeding without prejudice.” 17 U.S.C. § 1506(v)(1).

On December 8, 2023, Jaramillo filed a document captioned “Affidavit of Service,” in which a process server attested that she had made personal service of the claim and initial notice upon Sebastian Xibille Lugo on December 1, 2023, at 1615 Tilden Avenue Fort Wayne, Indiana 46805. Dkt. 5. However, in a “Description” section, the process server wrote: “Served: Sebastian Paul Lugo (showed ID).” *Id.* That description contradicts the attestation of service upon Sebastian Xibille Lugo. It indicates that instead, service was made on someone else who happens to have the same first and last names.

On January 11, 2024, Board staff received an email with the subject line, “The wrong person is being contacted. Help.” The email stated:

Hello, I was recently served papers and received correspondence about legal proceeding docket #23-CCB-0383. I am not Sebastian Xibille Lugo, the person being sued. I would like to stop receiving these correspondences to my home as I am not the person being sued. Can you please help me with this matter? Sebastian Xibille Lugo does not live at 1615 Tilden Avenue Fort Wayne, Indiana 46805.

Best Regards,

Sebastian Paul Lugo

See Dkt. 7. On February 1, 2024, the Board issued an Order to Show Cause or to Submit Proof of Additional Service, directing Jaramillo to either effect and submit proof of additional service, or show cause why the proceeding should not be dismissed for failure to effect valid service, by February 15, 2024, the final day of the 90-day service period. Dkt. 7.

Jaramillo has not filed an alternate proof of service or a formal response to that order. Instead, Jaramillo sent several emails to Board staff over the next 14 days, including materials from search reports conducted using Instant Checkmate and LexisNexis Accurint, which are commercially available databases of public information.

From Instant Checkmate, Jaramillo provided excerpts of a report that list five different mailing addresses for persons named Sebastian Lugo: the Fort Wayne address where service was made, as well as addresses in Brooklyn, and Montgomery, New York, and in Allentown and Reading, Pennsylvania. The excerpts do not specify the middle name or initial of any Sebastian Lugo listed.

Jaramillo's LexisNexis Accurint report indicates that it was generated using the following search terms: "Last Name: LUGO; First Name: SEBASTIAN; Street: 1615 TILDEN AVE; City: FORT WAYNE; State: IN." Unsurprisingly, such a targeted search generated a report stating that the Fort Wayne address is the subject's "probable current address." However, the report also lists Brooklyn and Ridgewood, New York addresses for persons named Sebastian Lugo, and indicates that the subject at the Fort Wayne address is "Sebastian P Lugo."

Those reports indicate that people named Sebastian Lugo may reside at the addresses listed, and that a Sebastian P. Lugo likely lives at the Fort Wayne address. They do not indicate that Sebastian Xibille Lugo resides at any of those addresses. Jaramillo offers no reason to conclude that Sebastian Paul Lugo is the same person as respondent Sebastian Xibille Lugo.

The Board has reviewed Jaramillo's submissions and finds that they do not provide a basis to avoid dismissal. "In order to proceed with a claim against a respondent," service and proof of service within 90 days of the Notice of Compliance is mandated without exception. 17 U.S.C. § 1506(g). Jaramillo has not filed a proof of service form demonstrating valid service on Sebastian Xibille Lugo and has not explained why the service on Sebastian Paul Lugo should suffice.

Accordingly, the Board dismisses this proceeding without prejudice. 17 U.S.C. § 1506(v)(1). Dismissal without prejudice means Jaramillo may raise the allegations again by filing a new claim, if valid service is made on Sebastian Xibille Lugo.

Copyright Claims Board