

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

In re:

MERENDON MINING (Nevada), INC.
a/k/a Milowe Brost,

Case No.: 09-11958-BKC-AJC

Chapter 7

Debtor.

MARCIA DUNN, Chapter 7 Trustee

Plaintiff,

v.

Adv. Pro. No.: 09-02518-AJC

MILOWE BROST, ELIZABETH BROST,
GARY SORENSON, THELMA SORENSON,
LARRY ADAIR, MARTIN WERNER,
MERENDON MINING (Colorado), INC.,
MERENDON MINING (Arizona), INC.,
MERENDON MINING (California), INC.,
TRUE NORTH PRODUCTIONS, LLC,
CAPITAL ALTERNATIVES, INC., CAPITAL
ALTERNATIVES (ASIA) LTD., THE INSTITUTE
FOR FINANCIAL LEARNING, GROUP OF
COMPANIES, INC., MERENDON MINING
CORPORATION, LTD., MERENDON MINING, INC.,
MERENDON DE HONDURAS S.A. DE C.V.,
MERENDON DE VENEZUELA C.A., MERENDON
DE PERU S.A., MERENDON DE ECUADOR S.A.,
SYNDICATED GOLD DEPOSITORY S.A. n/k/a
BAHAMA RESOURCE ALLIANCE, LTD., CONSUMER
DEBT RECOVERY TRUST/ HERITAGE FINANCIAL,
S.A., C.D.R.T. PROGRAM, STELLER (STELLAR) TRUST,
360 OR 3SIXTY EARTH RESOURCES, LTD.,
STERLING TRUST, BASE METALS CORPORATION,
STRATEGIC METALS CORPORATION,
ARBOR (ARBOUR) ENERGY, INC., EVERGREEN
MANAGEMENT SERVICES, LTD, QUATRO
COMMUNICATION CORPORATION, ALLUVIAL
UNITED INC., BEARSTONE CAPITAL MANAGEMENT
INC., BRIDGEWATER & CO. INC., CASCADIA
MANAGEMENT SERVICES S.A., EXPEDIA
LOGISTICS, FORTRIS BUSINESS SYSTEMS, INC.,
NORDIC MERCHANT CREDIT UNION, ONYX

**TRADING GROUP LLC, PERMA SECURITIES S.A.,
STELLER MANAGEMENT SERVICES, TENA
CAPITAL CORPORATION, TRANSICIONES
UNIVERSIAL S.A., WATCHERS INTERNATIONAL
TRANSIT LTD., GOLDENTRAIL EQUITY
MANAGEMENT LIMITED PARTNERSHIP,
GOLDENTRAIL MANAGEMENT CORPORATION,
and i E GROUP, INC.**

Defendants.

**CHAPTER 7 TRUSTEE'S RESPONSE TO CERTAIN DEFENDANTS' MOTION
TO DISMISS ADVERSARY CASE FOR LACK OF JURISDICTION**

Marcia Dunn, as Chapter 7 Trustee (the "Trustee") for Debtor, Merendon Mining (Nevada), Inc., a/k/a Milo Brost, files this her Response to Certain Defendants' Motion to Dismiss Adversary Case for Lack of Jurisdiction [D.E. # 39], and states:

1. Defendants, Thelma Sorenson; Gary Sorenson; Merendon Mining Corporation, Ltd., a Belizean corporation; Merendon de Honduras, S.A. de C.V., a Honduran corporation; Merendon de Venezuela, C.A., a Venezuelan corporation; Mernedon de Peru, S.A., a Peruvian corporation; and Merendon de Ecuador, S.A., an Equadorian corporation (collectively, the "Knowing Defendants"), are premature in filing their Motion to Dismiss Adversary Case for Lack of Jurisdiction [D.E # 39].

2. There is no time limit for service on foreign individuals and corporations. Although Rule 4(m), Fed. R. Civ. P., provides that a plaintiff must serve a defendant in the United States within 120 days, this section does not apply to service to defendants in foreign countries pursuant to Rule 4(f), Fed. R. Civ. P. Moreover, courts have discretion to extend the time for service of process in this cuntry, whether for good cause or not. See Horenkamp v. Van Winkle & Co., 402 F.3d 1129, 1133 (11th Cir. 2005) ("Thus, today we join our sister circuits and hold that Rule 4(m) grants discretion to the district

court to extend the time for service of process even in the absence of a showing of good cause”).

3. As Defendants’ note in their motion to dismiss, the Trustee has attempted service by mailing copies of the pleadings via U.S. First Class Mail to their addresses and as a result, Defendants have actual notice of these proceedings.

4. The Trustee has also motioned this Court to allow alternate service to certain foreign defendants pursuant to Rule 4(f)(3), Fed. R. Civ. P. (the “Service Motion”) [D.E. # 28], and is concurrently motioning this Court to appoint a translator to effectuate such service. Both motions are incorporated by reference herein. Since the Service Motion was pending at the time Defendants filed their motion to dismiss, they were fully aware Trustee intended to serve them via Rule 4(f)(3), Fed. R. Civ. P.

5. Upon this Court’s order, the Trustee will either receive authorization of service previously commenced by first class mail or provide a means to effectuate service to all Defendants directly via mail, with the exception of Merendon de Venezuela, C.A., which Trustee will serve via the designated Venezuelan Central Authority pursuant to the Hague Convention on the Service Abroad of Judicial and Extra-Judicial Documents (“Hague Service Convention”).

6. Defendants state that Belize is also a signatory to the Hague Service Convention, however, although Belize’s predecessor in sovereignty, British Honduras, was a party to the convention as a territory of the United Kingdom, Belize has not made a formal declaration on the continuation in force of the convention after it achieved its independence in 1981. Courts have held that Belize’s status to the Hague Service Convention is uncertain and that it is not a member or participating state. *See In re*

Jacobsen (Moser v. Coast Capital, Ltd.), No. 08-4128, slip op. at 6 (Bankr. E.D. Tex. January 23, 2009); *Mayoral-Amy v. BHI Corp.*, 180 F.R.D. 456, 459 (S.D. Fla. 1998).

7. Canada has not made a reservation under Article X of The Hague Service Convention and the Inter-American Convention on Letters Rogatory and Additional Protocol, to which Ecuador and Peru are both members, expressly allows other means of service – including service by mail.

8. Defendants cite *Harris v. Browning-Ferris Indus. Chem. Serv. Inc.*, 100 F.R.D. 775 (M.D. La. 1984) for the proposition that where a country that is a member to the Hague Service Convention specifically rejects service by direct mail, service may not be authorized in that manner. The only country that this would apply to is Venezuela and Trustee intends to serve Merendon (Venezuela) through the Venezuelan Central Authority via the Hague Service Convention upon this Court's approval of a translator and the actual translation of the documents to be served.

9. Although Defendants seek to dismiss this adversary case because they were served only by U.S. First Class Mail, they have not objected to the relief sought in the Service Motion. Furthermore, pursuant to Rule 4(f)(3), Fed. R. Civ. P., courts have authorized a wide variety of alternative methods of service, including regular mail and e-mail. *See In re International Telemedia Associates, Inc.*, 245 B.R. 713, 719-20 (Bankr. N.D. Ga. 2000) (noting the various methods courts have used to authorize service).

10. As a result of the foregoing, this Court should not dismiss these adversary proceedings for lack of jurisdiction. The Trustee is under no statutory deadline and is in the process of receiving authorization by this Court under Rule 4(f)(3), Fed. R. Civ. P., on allowable means to effectuate service on Defendants. Upon the ruling by this Court, the Trustee will pursue all service to all Defendants via all allowable channels.

WHEREFORE, the Trustee respectfully requests that this Court enter an Order denying Defendants' Motion to Dismiss Adversary Case for Lack of Jurisdiction, and granting any other such relief the Court deems just and proper.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished to all parties receiving electronic mail through the Courts CM/ECF system, by U.S. Mail to those parties not on the Court's electronic system and on the attached Service List, and, in accordance with the Court's Order of December 30, 2009 in the main case, Case No. 09-11958 [D.E. 74], has been posted to <http://gray-robinson.com/news.php?ACTION=view&CAT=1&ID=1475>, set up for the purposes of providing information on this case, this 17th day of February, 2010.

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SERVICE LIST

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