

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION**

VISION BANK,)
)
Plaintiff,)
)
v.) **CASE NUMBER 09-356-KD-C**
)
HUGH M. HEADRICK and GAIL M.) **IN ADMIRALTY**
HEADRICK,)
)
Defendants.)

ORDER

This matter is before the Court on plaintiff's "Emergency Motion to Allow Service of Process by Alternative Means (EMAIL) (Doc. 2) and its supplement thereto (Doc. 6). In its motion the plaintiff specifically requests that the court allow, pursuant to Fed.R.Civ.P. 4(f)(3), service of process on defendant Hugh M. Headrick by email in addition to U.S. First Class mail. However, in its supplement it appears that the request also encompasses the defendant Gail Headrick. Fed.R.Civ.P. 4(f)(3) provides that: Unless federal law provides otherwise, an individual -other than a minor, an incompetent person, or a person whose waiver has been filed - may be served at a place not within any judicial district of the United States: ... (3) by other means not prohibited by international agreement as may be directed by the court.

1) SERVICE ON GAIL HEADRICK

There are two reasons the court must deny service of process by email on Gail Headrick. First, plaintiff asserts that Gail Headrick "currently resides somewhere in Baldwin County, Alabama." There is no allegation that Gail Headrick is outside of any judicial district of the United States. Thus, service under Fed.R.Civ.P. 4(f)(3) is inapplicable. Gail Headrick must be served pursuant to the provisions of Fed.R.Civ.P. 4(e). Second, even if it was shown that Gail Headrick was outside any judicial district of the United States, plaintiff has failed to show that sending the

complaint through email will result in actual notice to Gail Headrick. Specifically, although exhibits attached to the motion show that other email has been sent to Gail Headrick at the listed email address, there is no evidence that Gail Headrick has received the emails or that she uses this email address. This could be a dormant email address. Accordingly, for the stated reasons the motion to effect service on Gail Headrick through email is **DENIED**.

2) SERVICE ON HUGH M. HEADRICK

Plaintiff, in its verified complaint, alleges that Hugh M. Headrick is a resident of the British Virgin Islands. In its motion, plaintiff asserts specifically that Hugh Headrick is residing in Tortolla. Plaintiff requests that it be allowed to serve the complaint on Hugh Headrick by email. Plaintiff has provided evidence that an email account identified as belonging to Hugh Headrick has recently received and sent emails regarding chartering a boat in the British Virgin Islands. Accordingly, plaintiff has shown that sending a copy of the complaint to this email address is reasonably calculated to result in actual notice of the complaint to defendant Hugh Headrick. While the court is not ready to adopt the general premise that all defendants in foreign countries should be served through email, this case presents special circumstances. The evidence submitted (emails from and to Hugh Headrick) indicate that he is a charter boat captain in the British Virgin Islands. The nature of this particular job makes it difficult to determine the individual defendant's location and to effect service in a timely manner. Accordingly, the court **GRANTS** the plaintiff's request to effect service of process as to Hugh Headrick by the email hughheadrick@yahoo.com.

DONE and ORDERED this the **19th** day of **June 2009**.

/s/ Kristi K. DuBose
KRISTI K. DUBOSE
UNITED STATES DISTRICT JUDGE