

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

HARRY BRADY

:

v.

:

Civil No. 3:00CV828(AHN)

U.S. AIRWAYS GROUP, INC.

:

RULING ON MOTION TO DISMISS

This diversity action involves a state law negligence claim for personal injuries that the plaintiff, Harry Brady ("Brady"), incurred when he was exiting an airplane operated by the defendant, U.S. Airways Group, Inc. ("U.S. Airways"), in Rochester, New York.

Now pending is U.S. Airway's motion to dismiss the complaint. For the following reasons, the motion [doc. # 8] is GRANTED.

FACTS

Brady was injured on May 8, 1998. The federal complaint was filed with the court on May 5, 2000, but service was not effectuated within the 120-day time prescribed by Fed. R. Civ. P. 4(m). On October 24, 2000, Brady moved for an enlargement of time to serve the summons and complaint. The motion was granted on October 27, 2000. U.S. Airways was served on November 30, 2000.

DISCUSSION

U.S. Airways maintains that this action is time barred because it was not served within two years of Brady's alleged injury. Brady asserts that the complaint was timely filed under Fed. R. Civ. P. 4(m) because he received an extension of time on October 27, 2000 to effectuate service of process. There is no merit to Brady's claim.

Under Connecticut law, a plaintiff alleging a negligence cause of action has two years from the date his injury is sustained or discovered to bring an action against the alleged tortfeasor. See Conn. Gen. Stat. § 52-584.¹ Connecticut law also provides that an action is commenced, and the statute of limitations is tolled, when the defendant is served with the summons and complaint. See Howard v. Robertson, 27 Conn. App. 621, 625 (1992). In contrast, under federal law, an action is commenced, and the statute of limitations is tolled, when a complaint is filed with the court. See Fed. R. Civ. P. 3. Thereafter, under the federal rules, a plaintiff has 120 days to serve the defendant. See Fed. R. Civ. P. 4(m). But Rule 3 does not "purport to displace state tolling rules for purposes of

¹ Under Connecticut choice-of-law rules, the forum state's statute of limitations applies to claims raised in a federal diversity action, even where the injury occurred out of state. See Somohano v. Somohano, 29 Conn. App. 392 (1992); Slekis v. National R.R. Passenger Corp., 56 F. Supp. 2d 202 (D. Conn. 1999). A federal court sitting in diversity must follow the choice-of-law rules of the forum state. Klaxon Co. v. Stentor Elec. Mfg. Co., 313 U.S. 487, 496 (1941).

state statutes of limitations." Walker v. Armco Steel Corp., 446 U.S. 740, 752-53 (1980) (holding that "in the absence of a federal rule directly on point, state service requirements which are an integral part of the state statute of limitations should control in an action based on state law which is filed in federal court under diversity jurisdiction"). Thus, when a federal court is sitting in diversity, the federal rules do not apply to the manner in which a case is considered commenced. See Converse v. General Motors Corp., 893 F.2d 513, 515-16 (2d Cir. 1990) (holding that because Connecticut's actual service rule is an integral part of the state statute of limitations, that rule rather than Rule 3 governs the commencement of a diversity action for statute of limitations purposes) (citing Walker v. Armco Steel Corp., 446 U.S. 740 (1980)).

Accordingly, when a state law negligence action is brought in federal court under diversity jurisdiction, the defendant must be actually served within the two-year statute of limitations. Filing the complaint with the court within the two-year period does not toll the statute of limitations. Thus, Brady's reliance on Rule 4's 120-day period for effectuating service, and the court's allowance of additional time to do so, is misplaced and unavailing. Because the complaint in this action was not served on U.S. Airways within the two-year period as required by Connecticut law, the action is time barred under Connecticut law.

CONCLUSION

For the foregoing reasons, Defendant's Motion to Dismiss [doc. # 8] is GRANTED. This action is dismissed without prejudice to the plaintiff's right to refile in another jurisdiction.

SO ORDERED this day of April, 2001, at Bridgeport, Connecticut.

Alan H. Nevas
United States District Judge