STATE OF MICHIGAN
IN THE 17th CIRCUIT COURT FOR KENT COUNTY

BRETON ASSOCIATES
LIMITED PARTNERSHIP,

Plaintiff,

vs.

BETTER ADVERTISING
PROFESSIONAL'S, INC.,

Defendant.
_____/

Case No. 19-02244-CBB

HON. CHRISTOPHER P. YATES

ORDER DENYING PLAINTIFF'S MOTION FOR ALTERNATE SERVICE

In this routine dispute for collection of unpaid rent on a commercial lease, Plaintiff Breton Associates Limited Partnership ("Breton Associates") has filed suit against one of its former tenants, Defendant Better Advertising Professional's, Inc. ("Better Advertising").[1] Right before the original summons expired, Breton Associates successfully moved the Court to grant a four-month extension of the summons through October 14, 2019. On Friday, October 11, 2019, as the extended summons was about to expire, Breton Associates filed a motion for alternate service proposing that the Court authorize service by "[p]osting in three conspicuous places, the CADL – Downtown Lansing Library, Ingham County Hall, and the Ingham County Circuit Court." Because this proposed mechanism for alternate service seems designed ***not*** to afford the defendant notice of the pending lawsuit, the Court must deny Breton Associates's motion for alternate service as fundamentally inconsistent with the standards derived from the Due Process Clause of the Fourteenth Amendment.

[1] The defendant's insertion of an improper apostrophe in its name makes the Court wonder how the defendant thinks it can provide "Better Advertising" when its mastery of basic punctuation is very much in doubt.

Although MCR 2.105(I) authorizes alternate service in limited circumstances, the Court faces a constitutional imperative establishing that a judgment cannot be rendered unless the defendant is afforded due process, including notice of the lawsuit. Our Supreme Court has said so, Lawrence M Clarke, Inc v Richco Construction, Inc, 489 Mich 265, 274 (2011), and so has our Court of Appeals, see Bullington v Corbell, 293 Mich App 549, 556 (2011), because the due-process "'right to be heard has little reality or worth unless one is informed that the matter is pending[.]'" Lawrence M Clarke, 489 Mich at 274; accord Bullington, 293 Mich App at 556. To be sure, MCR 2.105(I) affords the Court some discretion to permit alternate service, but the chosen form of alternate service should be "reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard." Thus, "while personal service is not always required, '[t]he requirement of notice so as to afford an opportunity to be heard is clearly the heart' of Michigan's substituted-service court rule." Lawrence M Clarke, 489 Mich at 275.

It appears that Plaintiff Breton Associates has tried in vain to serve process upon Defendant Better Advertising. After several failed attempts at service and a record search that yielded no useful leads, Breton Associates figuratively threw up its hands and moved for alternate service. The Court finds that Breton Associates has presented sufficient facts to justify alternate service, but the Court's finding does not obviate the need for alternate service in a "manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard." See MCR 2.105(I)(1). Breton Associates's proposal to furnish alternate service by posting notices at three public buildings in Lansing strikes the Court as calculated ***not*** to provide actual notice to Better Advertising and thus produce a default judgment subject to attack on due-process grounds. Accordingly, the Court shall not approve that proposed form of alternate service.

If Plaintiff Breton Associates had not waited until the last minute to request alternate service, there might very well be time to approve and accomplish alternate service in a "manner reasonably calculated to give the defendant actual notice of the proceedings and an opportunity to be heard." See MCR 2.105(I)(1). But MCR 2.105(J)(1) and our Supreme Court have mandated that the Court must select the "'best means available under the circumstances'" to provide notice to the defendant, Lawrence M Clarke, 489 Mich at 274, quoting MCR 2.105(J)(1), and the plaintiff's motion does no such thing. Moreover, because the Court has not been afforded the time necessary to consider a new proposal for a more effective manner of accomplishing alternate service, the Court simply must deny Breton Associates's motion.[2]

IT IS SO ORDERED.

Dated: October 14, 2019

HON. CHRISTOPHER P. YATES (P41017)
Kent County Circuit Court Judge

[2] In several other cases where the plaintiff has filed a motion for alternate service well before the expiration of the summons, the Court has devised multifaceted methods of alternate service, but such methods ordinarily require a substantial expenditure of time and effort to complete. Here, there is no time to complete that type of alternate service before the summons expires later today.