

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

**THE KU ENDOWMENT
CHARITABLE GIFT FUND,**

Plaintiff,

v.

LSB INDUSTRIES, INC.,

Defendant.

CIVIL ACTION

No. 08-2066-KHV

ORDER

On February 8, 2008, The KU Endowment Charitable Gift Fund filed suit against LSB Industries, Inc. (“LSB”), alleging violations of the Securities Exchange Act of 1934, 15 U.S.C. § 78a et seq., and the Kansas Uniform Securities Act, K.S.A. § 17-12a101 et seq., as well as fraud and breach of fiduciary duty under Kansas common law. On June 12, 2008, Magistrate Judge James P. O’Hara ordered plaintiff to show good cause in writing why service of the summons and complaint was not made 120 days after the filing of the complaint, and why the Court should not dismiss the claim without prejudice for lack of prosecution. This matter is before the Court on Plaintiff’s Response To Notice And Order To Show Cause (Doc. #7) filed June 27, 2008. For reasons stated below, the Court finds good cause why the case should not be dismissed.

Rule 4(m), Fed. R. Civ. P., requires that plaintiff accomplish service of process within 120 days of filing the complaint. On June 19, 2008, plaintiff filed the return of service, which indicated that service was completed on defendant on April 25, 2008 – 77 days after plaintiff filed the complaint. The delay in filing the return of service does not render the service defective. See Fed. R. Civ. P. 4(l)(3) (“Failure to prove service does not affect the validity of service.”). On this

record, the Court is satisfied that plaintiff has complied with the time requirements for service and that the case should not be dismissed for lack of prosecution.

The Court notes that LSB has not yet answered the complaint. Plaintiff's response indicates that the parties are currently discussing resolution options and have agreed to suspend the answer deadline. No later than **August 8, 2008**, the parties shall report to Judge O'Hara the status of their discussions. If the case is not resolved at that time, LSB shall file its answer or other responsive pleading no later than **August 18, 2008**, and Judge O'Hara shall proceed with pretrial scheduling.

IT IS SO ORDERED.

Dated this 31st day of July, 2008 at Kansas City, Kansas.

s/ Kathryn H. Vratil
KATHRYN H. VRATIL
United States District Judge