

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

MARSHA RUDELL BROWN, )  
*Plaintiff,* )  
 )  
vs. ) 1:14-cv-00931-JMS-DML  
 )  
BMW OF NORTH AMERICA, LLC AND )  
BAYERISCHE MOTOREN WERKE AG, )  
*Defendants.* )

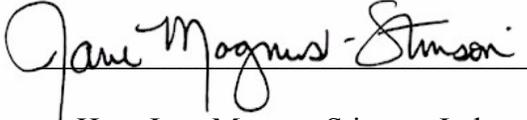
**ORDER**

Presently pending before the Court is Defendant Bayerische Motoren Werke AG’s (“BMW AG”) Motion to Dismiss for Insufficient Service of Process pursuant to Federal Rule of Civil Procedure 12(b)(5). [[Filing No. 24.](#)] BMW AG contends that, as a foreign entity, Plaintiff Marsha Brown was required to serve BMW AG in accordance with the Hague Convention, but failed to do so. [[Filing No. 25 at 1.](#)] Ms. Brown did not respond to BMW AG’s motion.

BMW AG is a German entity. [[Filing No. 18 at 1](#); [Filing No. 25-1 at 2.](#)] Ms. Brown attempted to effectuate service on BMW AG by serving Defendant BMW of North America, LLC (“BMW NA”), [[Filing No. 19](#)], because Ms. Brown alleges that BMW NA is BMW AG’s alter ego. [[Filing No. 18 at 3.](#)] BMW AG filed a Motion to Quash Ms. Brown’s purported service on it, [[Filing No. 22](#)], arguing, among other things, that it is not BMW NA’s agent or alter ego. [[Filing No. 23 at 7-8.](#)] Ms. Brown failed to respond to BMW AG’s Motion to Quash. The Magistrate Judge granted BMW AG’s Motion to Quash, stating that “BMW NA has established that it is a separate and independent entity from BMW [AG] and is *not* BMW [AG’s] agent or alter ego for service of process.” [[Filing No. 38 at 1.](#)] Ms. Brown did not file an objection to the Magistrate Judge’s ruling.

Ms. Brown, as plaintiff, “bears the burden to demonstrate that the district court has jurisdiction over each defendant through effective service.” [Cardenas v. City of Chicago, 646 F.3d 1001, 1005 \(7th Cir. 2011\)](#). Because the Magistrate Judge quashed Ms. Brown’s attempt to properly serve BMW AG, and Ms. Brown did not object to that ruling, Ms. Brown has not carried her burden to establish that service was proper. When service is insufficient, the Court may grant a Rule 12(b)(5) motion to dismiss and dismiss the unserved party without prejudice. See [id.](#); see also [United States v. Ligas, 549 F.3d 497, 501 \(7th Cir. 2008\)](#) (noting that dismissal for insufficient service of process is without prejudice). The Court elects to do so here. Accordingly, BMW AG’s Motion to Dismiss is **GRANTED**, [[Filing No. 24](#)], and BMW AG is **DISMISSED WITHOUT PREJUDICE**.

October 31, 2014

  
Hon. Jane Magnus-Stinson, Judge  
United States District Court  
Southern District of Indiana

**Distribution via ECF to all counsel of record**