

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19

HON. RICARDO S. MARTINEZ

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

CASCADE YARNS, INC., a Washington Corporation,

Plaintiff,

vs.

KNITTING FEVER, INC., a New York Corporation, DESIGNER YARNS, LTD., a corporation of England, FILATURA PETTINATA V.V.G. DI STEFANO VACCARI & C. (S.A.S.), and entity organized or existing under the laws of Italy, SION ELALOUF, an individual, DIANE ELALOUF, an individual, JAY OPPERMAN, an individual, DEBBIE BLISS, an individual, DAVID WATT, an individual and DOES 1-50,

Defendant.

Case No. 2:10-cv-00861 RSM

CASCADE’S MOTION FOR ALTERNATIVE SERVICE OF PROCESS

Note On Motion Calendar: January 21, 2011

I. INTRODUCTION AND RELIEF REQUESTED

Plaintiff Cascade Yarns, Inc. (“Cascade”) moves this Court for a special order of service of process pursuant to Federal Rule of Civil Procedure 4(f)(3). Earlier this month, the Court dismissed Defendant David Watt from this action without prejudice for lack of specific jurisdiction or personal jurisdiction under 28 U.S.C. § 1965(b) of the Racketeer Influenced and Corrupt Organization Act (“RICO”). Relying upon a decision of another district court, this Court

1 held that it could not exercise RICO jurisdiction over Mr. Watt because he was served outside of
2 the United States. However, case law cited by Cascade suggested that Cascade could properly
3 serve Mr. Watt in England. Nevertheless, Mr. Slavitt has already been an agent for service of
4 process upon Designer Yarns and VVG. Thus there is a means available to serve Mr. Watt within
5 the United States, should the Court grant Cascade the opportunity to comply with the letter of its
6 order.

7 Accordingly, the Court should enter an order allowing substituted service on Mr. Watt in
8 the United States through his attorneys of record pursuant to Rule 4(f)(3), as the Eastern District
9 of Pennsylvania recently did in another case brought against these Defendants. This is the only
10 feasible method of providing Cascade the opportunity to comply with the Court's order.

11 **II. FACTUAL BACKGROUND**

12 Cascade, a Washington corporation, brought this action against Defendants Debbie Bliss,
13 Designer Yarns, Ltd., Diane Elalouf, Sion Elalouf, Jay Opperman, David Watt and Filatura
14 Pettinata V.V.G. Di Stefano Vaccari & C. (S.A.S.) ("VVG") in the Western District of
15 Washington, alleging, *inter alia*, that defendants entered into a conspiracy to cause injury to
16 business and property in violation of RICO. Dkt. No. 4, ¶¶ 126-131. After a series of delays,
17 appearing through counsel located in the United States, Defendants Debbie Bliss, Designer Yarns,
18 Ltd., Diane Elalouf, Sion Elalouf, Jay Opperman and David Watt (collectively, "Defendants")
19 brought a Motion to Dismiss for Lack of Personal Jurisdiction. Dkt. No. 34. Months later and
20 after the period to answer had already expired, VVG brought an identical motion. Dkt. No. 88.
21 Each and every Defendant has been represented by the same counsel, who has presented a unified
22 defense.

23 Cascade opposed Defendants' Motion on the ground that the Court has specific and RICO
24 jurisdiction over all of the defendants. Dkt. No. 55. In particular, Cascade argued that Mr. Watt,
25 a British citizen actively involved in the management of Designer Yarns, Ltd., has sufficient
26 contacts with Washington to support specific jurisdiction. *Id.* Alternately, however, Cascade

1 argued that RICO personal jurisdiction exists over Mr. Watt (and, accordingly, all of the
2 defendants) because KFI conceded Washington jurisdiction and because Mr. Watt was served
3 pursuant to RICO, subjecting him to jurisdiction in Washington but not New York, where all
4 other defendants are amenable to suit. *Id.* After the parties had fully briefed the Motion, the
5 Court ordered supplemental briefing on the issue of whether Mr. Watt had sufficient national
6 contacts with the United States to support personal jurisdiction under RICO. Dkt. No. 110. In its
7 supplemental briefing, Cascade explained that RICO was applicable to Mr. Watt, regardless of
8 method of service, and accordingly jurisdiction over him -- and all of the defendants -- was
9 proper. Dkt. No. 121.

10 On January 3, 2011, the Court issued an order granting in part and denying in part
11 Defendants' motion. Dkt. No. 161. The Court dismissed Mr. Watt from this action, finding that
12 the Court lacked RICO and specific personal jurisdiction over him. *Id.* at pp. 11-12, 18. With
13 respect to RICO jurisdiction, the Court found that solely because Mr. Watt was not served in the
14 United States, he could not be subject to RICO jurisdiction. *Id.* at p. 11. Mr. Watt's location, at
15 the time of service of process, was the only stated justification for Mr. Watt's dismissal. As all of
16 the remaining defendants were amenable to suit in New York, the Court found that the
17 requirements for the exercise of RICO jurisdiction were not met. *Id.* The Court also found that
18 Mr. Watt was not subject to specific jurisdiction in Washington. *Id.* at p. 12. Thus, the Court
19 dismissed the First Amended Complaint as to Mr. Watt. *Id.* at p. 18.

20 Cascade now requests that the Court order substituted service on Mr. Watt through his
21 attorneys -- Mr. Joshua Slavitt of Pepper Hamilton LLP or Mr. Warren Rheume of Davis Wright
22 Tremaine LLP -- in the United States. This will provide Cascade with the opportunity to comply
23 with the Court's decision that Mr. Watt must be served in the United States for RICO jurisdiction
24 to apply.

1 **III. DISCUSSION**

2 **A. Cascade May Reinstitute Suit Against Mr. Watt.**

3 Pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, a dismissal for lack of
4 personal jurisdiction is not on the merits and is without prejudice. Fed. R. Civ. P. 41(b); *see also*
5 *Robinson v. Overseas Military Sales Corp.*, 21 F.3d 502, 507 n.4 (2d Cir. 1994) (plaintiff may
6 bring suit against a plaintiff dismissed for lack of personal jurisdiction under circumstances
7 supporting jurisdiction). Thus, although the Court's order did not specify, the dismissal of Mr.
8 Watt for lack of personal jurisdiction was without prejudice. Accordingly, Cascade may seek to
9 reinstitute this suit against Mr. Watt through service under Rule 4(f)(3).

10 **B. The Court Should Order Substituted Service On Mr. Watt In The United
11 States Through His Attorneys.**

12 Rule 4(f)(3) allows for service of process on an individual in a foreign country "by other
13 means not prohibited by international agreement, as the court orders." Fed. R. Civ. P. 4(f)(3).
14 Rule 4(e) allows service of process on an individual through an agent authorized by law to accept
15 service. Fed. R. Civ. P. 4(e)(2)(C). Court-ordered service under Rule 4(f)(3) constitutes service
16 "authorized by law" for purposes of Rule 4(e). *See RSM Prod. Corp. v. Fridman*, 2007 U.S. Dist.
17 LEXIS 58194, at *18 (S.D.N.Y., Aug. 10, 2007).

18 On December 7, 2010, in *The Knit With v. Knitting Fever Inc., et al.*, Case No. 2:08-cv-
19 04221-RB, a case brought against many of the same defendants named in this action, the Eastern
20 District of Pennsylvania ordered service of process pursuant to Rule 4(f)(3) on Designer Yarns,
21 Ltd. and VVG through their United States attorney, Mr. Slavitt, by any method of service.
22 Declaration of Robert J. Guite ("Guite Decl."), Ex. A. The Court found that the plaintiff, The
23 Knit With ("TKW"), satisfied the requirements for an order of service under Rule 4(f)(3). *Id.*

24 Rule 4(f)(3) only requires that the alternate service be: (1) directed by the court; (2) be not
25 prohibited by an applicable international agreement; and (3) comport with constitutional notions
26 of due process. *See Rio Properties, Inc. v. Rio Int'l Interlink*, 284 F.3d 1007, 1014 (9th Cir.

1 2002); *see also Controls Corp. v. Vesco*, 593 F.2d 166, 176 (2d Cir. 1979). Rule 4(f)(3) service is
2 not a last resort or extraordinary relief. *See Rio Properties, Inc.*, 284 F.3d at 1015 (plaintiff not
3 required to attempt every conventional means of service before requesting alternative service);
4 *see also Vesco*, 593 F.2d at 176 (rule providing for alternate methods of service permits the
5 district court to tailor the manner of service to fit the necessities of a particular case).

6 Like TKW, Cascade can easily meet the three requirements for an order of service under
7 Rule 4(f)(3). First, it is well established that a court may order service on a foreign defendant's
8 attorney in the United States under Rule 4(f)(3). *See, e.g., KPN B.V. v. Corcyra D.O.O.*, 2009
9 U.S. Dist. LEXIS 20906, at *7 (S.D.N.Y., March 16, 2009); *Ist Tech., LLC v. Digital Gaming*
10 *Solutions, et al*, 2008 U.S. Dist. LEXIS 88341, at *20-*26 (E.D. Mo., Oct. 31, 2008); *RSM Prod.*,
11 2007 LEXIS 58194 at *17-*18; *Ehrenfeld v. Mahfouz*, 2005 U.S. Dist. LEXIS 4741, at *6
12 (S.D.N.Y., Mar. 23, 2005); *BP Prods. North Am., Inc. v. Dagra*, 232 F.R.D. 263, 265 (E.D. Va.
13 2005); *Foreign Fin. Group, LLC v. President & Fellows of Harvard College*, 199 F.R.D. 22, 24-
14 25 (D. Me. 2001).

15 Second, no international agreement prohibits service of process on a foreign defendant by
16 service directed to that defendant's attorney in the United States. *Corcyra D.O.O.*, 2009 LEXIS
17 20906 at *5 n.1. Indeed, the Hague Convention does not preclude and is not offended by such
18 service. *See Vesco*, 593 F.2d at 179-80 (the Hague Convention is not intended to abrogate the
19 methods of service prescribed by Rule 4); *FMAC Loan Receivables v. Dagra*, 228 F.R.D. 531,
20 534 (E.D. Va. 2005) (request for court-directed service on defendant through United States
21 counsel does not implicate the Hague Convention because it involves no transmittal of documents
22 abroad).

23 Third, and finally, service upon Mr. Watt's attorneys comports with due process, which
24 only requires that service be reasonably calculated to provide a defendant with notice and an
25 opportunity to object. *Mullane v. Cenral Hanover B. & T. Co.*, 339 U.S. 306, 314 (1950);
26 *Espinosa v. United Student Aid Funds, Inc.*, 545 F.3d 1113, 1122 (9th Cir. 2008). Here, Mr. Watt

1 has appeared in this action through his attorneys, Mr. Slavitt and Mr. Rheume, who have
2 vigorously defended Mr. Watt for 9 months in this action. Obviously, given their involvement in
3 this litigation on Mr. Watt's behalf, Mr. Slavitt and Mr. Rheume are well positioned to provide
4 notice of substituted service in this suit. See *United States v. Estate of Machat*, 2009 U.S. Dist.
5 LEXIS 87000, at *11 (S.D.N.Y., Sept. 21, 2009) (service upon attorney in the United States who
6 has entered an appearance for defendant authorized as alternative service of process is reasonably
7 calculated to give notice and provide an opportunity to respond).

8 Because all of the requirements for Rule 4(f)(3) service are met, the Court should order
9 service of process upon Mr. Watt through substituted service on Mr. Rheume and/or Mr. Slavitt,
10 Mr. Watt's attorneys of record. Indeed, Mr. Slavitt produced his representation letter for Mr.
11 Watt, dated August 2, 2010. Guite Decl., Ex. B. There can be no question that he represents Mr.
12 Watt in this matter. *Id.*

13 **C. Cascade Should Be Allowed The Opportunity To Serve Mr. Watt In The**
14 **United States.**

15 In holding that service in the United States is required for RICO jurisdiction to apply, the
16 Court followed *Doe v. Unocal Corp.*, 27 F. Supp. 2d 1174, 1182 (C.D. Cal. 2001), a ten-year old
17 case from the Central District of California. Dkt. No. 161 at pp. 10-11. *Doe* held that service
18 must be made on a foreign defendant in the United States because RICO does not authorize
19 worldwide service of process. *Id.* at p. 11. It also held that the national contacts test does not
20 apply to defendants served outside of the United States. *Id.*

21 Cascade has not found -- and Defendants have not cited -- a binding Ninth Circuit
22 decision that requires Cascade to serve a foreign defendant in the United States for RICO
23 jurisdiction to apply. Indeed, the Ninth Circuit has never conditioned the national contacts test
24 based on the manner or place where service was actually effected or the specific statutory
25 provision authorizing nationwide service. *North v. Winterthur Assur.*, 279 B.R. 845, 852 (D.
26 Ariz. 2002) (rejecting argument that national contacts do not apply unless the defendant is served

1 pursuant to the applicable provision for nationwide service of process); *see also Go-Video, Inc. v.*
2 *Akai Elec. Co., Ltd.*, 885 F.2d 1406, 1414 (9th Cir. 1989). Instead, the Ninth Circuit has
3 emphasized the fact that Congress, by authorizing national service, broadened the authorized
4 scope of personal jurisdiction, regardless of the wording of the statute. *Id.*

5 Furthermore, contrary to *Doe*, numerous courts have exercised RICO jurisdiction over
6 defendants abroad regardless of the method of service. *See, e.g., Larsen v. Lauriel Invs., Inc.*, 161
7 F. Supp. 2d 1029, 1048 (D. Ariz. 2001) (exercising RICO jurisdiction over Bahamian residents);
8 *Nagoya Venture Ltd. v. Bacopulos*, 1998 U.S. Dist. LEXIS 8580, at *13-16 (S.D.N.Y., June 11,
9 1998) (exercising RICO jurisdiction over Canadian corporations); *Madanes v. Madanes*, 981 F.
10 Supp. 241, 260 (S.D.N.Y. 1997) (exercising RICO jurisdiction over Argentinian citizen and Isle
11 of Man resident and corporation); *Herbstein v. Bruetman*, 768 F. Supp. 79, 81 (S.D.N.Y. 1991)
12 (exercising RICO jurisdiction over Argentinian corporation).

13 Cascade could not have predicted that the Court would adopt the *Doe* ruling and, thus,
14 would need to serve Mr. Watt in the United States. For this reason, and because Mr. Watt's
15 dismissal is without prejudice, this Court should order substituted service on Mr. Watt in the
16 United States through his attorneys pursuant to Rule 4(f)(3).

17 **IV. CONCLUSION**

18 Cascade has established that service on Mr. Watt through his attorneys pursuant to Rule
19 4(f)(3) is proper and that, given the circumstances of the case, it should be given the opportunity
20 to do so. Defense counsel have already submitted evidence that they are in communication with
21 Mr. Watt. Accordingly, Cascade's Motion for Special Order of Service of Process should be
22 granted.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Dated: January 6, 2011

SQUIRE, SANDERS & DEMPSEY (US) LLP

By: /s/ Robert J. Guite
Robert J. Guite, WSBA No. 25753

Attorneys for Plaintiff
Cascade Yarns, Inc.