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HAGUE SERVICE CONVENTION. Southern District of New York upholds default judgment against French defendant despite plaintiff's failure to comply strictly with certain requirements under the Hague Service Convention.

Burda Media, Inc. v. Blumenberg
No. 97 Civ. 7167, 2004 U.S. Dist. LEXIS 8804 (S.D.N.Y. May 18, 2004)

On April 10, 2000, a default judgment was entered against French defendant Christian Viertel. More than two and a half years later, on October 31, 2003, Defendant filed a motion to vacate the default judgment pursuant to Fed. R. Civ. P. 60(b)(4) on the grounds that the court lacked jurisdiction and that the judgment was void.

Plaintiffs originally filed suit on September 24, 1997. In January 1998 Plaintiffs first attempted, albeit unsuccessfully, to serve Defendant by mail at his residence in France, pursuant to the Hague Service Convention. Next, in July of 1998, Plaintiffs again attempted personal service pursuant to the Hague Convention through the French authorities by providing them with a completed Form USM-94 (the form used for making service under the Convention) and copies of the summons and complaint in both French and English.

Although French authorities did not complete the required Certificate of Service pursuant to Article 6 of the Hague Convention, the court found that the New York plaintiffs had properly perfected service of process on Defendant because the mere failure to comply with the strict requirements of the Hague Convention was not automatically fatal to effective service.

The court emphasized that the Federal Rules of Civil Procedure "stress actual notice, rather than strict formalism" and that "there is no indication from the language of the Hague Convention that it was intended to supersede this general and flexible scheme." Thus, the court found that it was within its discretion to decide if service was properly perfected under the Hague Convention where Plaintiffs attempted in good faith to comply with it and where Defendant received sufficient notice despite a technical defect.

In the instant matter, "the failure of compliance was solely on the part of the French authorities." Further, Defendant never claimed that "he was not given actual notice of the lawsuit that had been filed against him." Thus, the court held that Defendant "may not void the judgment on the grounds that the French authorities failed to complete the Certificate before returning the USM-94 to [Plaintiffs]."

Defendant also argued that, even though he received actual notice of the lawsuit, the court was deprived of jurisdiction because a copy of the summons was not delivered to his residence in France as required by Fed. R. Civ. P. 4(c)(1). The court held that the question of whether actual receipt of the summons was required under Rule 4, "is irrelevant because … the Convention 'supplements'— and is manifestly not limited by — Rule 4." Further, Defendant failed to show that the requirement of actual receipt of the summons applied to service under the Hague Convention.

Regarding this issue, the court adopted the reasoning in two Ninth Circuit cases. The "service attempted by Plaintiff in the instant case was reasonably

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