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California Appellate Court Okays Service on Foreign Corporations Through Service on Their California Subsidiaries in Certain Circumstances Despite Hague Convention Requirements

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Foreign companies doing, or planning on doing, business in California should be aware that a recent decision from the California Court of Appeal for the Fourth District held that under certain circumstances a foreign corporation can be validly served in California by serving such corporation's California-based subsidiary despite the requirements of the Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (the "Hague Service Convention"). Such decision requires foreign companies to be alert to the receipt of service documentation by their California-based subsidiaries.

In *Yamaha Motor Company, Ltd. v. Superior Court*, the California Court of Appeal for the Fourth District reminded us that federal law makes the validity of service dependent on state law. Relying on *Cosper v. Smith & Wesson Arms Co.* (California Supreme Court decision) and *Volkswagenwerk Aktiengesellschaft v. Schlunk* (U.S. Supreme Court case) and interpreting the relevant provisions of the California Code of Civil Procedure and Corporations Code, the California Court of Appeal ruled that a Japanese company could be served under California law by serving its American subsidiary (alleged by plaintiff to be the Japanese company's "general manager" in California) rather than through the Hague Service Convention. The Court of Appeal held that although such method of service seems "too easy a way to get around the Hague Service Convention," in reality, under California law, that is the case.

The plaintiff in the case was a 12-year-old boy who was injured while riding a Yamaha product. A lawsuit was brought against Yamaha Motor Corporation USA ("Yamaha-America") and Yamaha Motor Company, Ltd. ("Yamaha-Japan"). Plaintiff alleged that Yamaha-America was the wholly owned domestic subsidiary of Yamaha-Japan and the exclusive

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importer and distributer of Yamaha vehicles for the United States. In addition, plaintiff alleged that Yamaha-America conducted the following activities in connection with Yamaha vehicles: testing, provision of warranty and owner manuals, marketing, and receiving of all customer complaints and accident reports for the United States. Plaintiff's theory to serve Yamaha-Japan by serving Yamaha-America was that Yamaha-America was Yamaha-Japan's "general manager" in California and, as such, it can be validly served on behalf of Yamaha-Japan under California law.

In *Schlunk*, the U.S. Supreme Court held that "the only transmittal to which the [Hague Service] Convention applies is a transmittal abroad that is required as a necessary part of service" and that "the Due Process Clause does not require an official transmittal of documents abroad every time there is service on a foreign national." Therefore, the question becomes a matter of state service of process law. That is, if the applicable state law requires service abroad, then the Hague Service Convention will apply, and if it does not, then the Hague Service Convention is not implicated.

While California does state in California Code of Civil Procedure Section 413.10 that the rules governing summonses are "subject to" the Hague Service Convention, the *Yamaha* court was quick to point out that "subject to" does not mean "pursuant to the rules of," but rather that "treaties trump *conflicting* state law." Pursuant to California Code of Civil Procedure Section 416.10, a corporation may be served, among other techniques, by any method authorized in Sections 1701, 1702, 2110, or 2111 of the California Corporations Code. Corporations Code Section 2110 specifically applies to foreign corporations and authorizes hand delivery of process to the "general manager in this state" of a foreign corporation as valid service on such foreign corporation, therefore the Hague Service Convention is not implicated.

In *Cosper*, while interpreting a subsequently repealed California Corporations Code Section, the California Supreme Court concluded that, under California law, service was proper when the "agent served is of sufficient character and rank to make it reasonably certain that the defendant will be apprised of the service made." In formulating this language, the court was attempting to determine if a sales representative that operated on a nonexclusive basis was the "general manager" in California of the foreign corporation. The court found that, yes, such a sales representative was the "general manager" and that service was proper because the representative was of sufficient rank to make it reasonably certain that the foreign corporation would be apprised of the service made.

Taking into account the fact that Yamaha-America provided to Yamaha-Japan the exclusive services described above, which are much more in-depth than those found in the *Cosper* case, the *Yamaha* court

found that it was "reasonably certain" that Yamaha-America would apprise Yamaha-Japan of any service in California, and as a result, Yamaha-America was the "general manager" in California for Yamaha-Japan. In addition, the *Yamaha* court found that the fact that the Corporations Code Section discussed in *Cosper* had been repealed was a "non-issue," as the court could not "tease out an intervening change in the statutory law." Therefore, service on Yamaha-Japan's domestic subsidiary, Yamaha-America, which acts as its "general manager" in California, was valid.

Although, as a result of this California Court of Appeal's decision, plaintiffs may, under certain circumstances, forgo service on a foreign corporation pursuant to the Hague Service Convention, it is important to keep in mind that there are very good reasons to prefer such service instead. As Justice O'Connor pointed out in the *Volkswagenwerk* case, "those who eschew [the Hague Service Convention's] procedures risk discovering that the forum's internal law required transmittal of documents for services abroad and that the [Hague Service Convention] provided the exclusive means of valid service." In addition, she points out that "parties that comply with the [Hague Service Convention] ultimately may find it easier to enforce their judgments abroad."

Manatt, Phelps & Phillips, LLP's attorneys stand ready to assist you with any questions you may have regarding the implications of this decision.

For additional information on this issue, contact:


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