

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

HOWARD FRIEDMAN, : CIVIL ACTION
 :
 Plaintiff, :
 :
 v. :
 :
 :

ISRAEL LABOUR PARTY, HAIM RAMON, NO. 96-CV-4702
DAVID LIBAI, MOSHE SHAHAL, TOVA
ELINSON, and JOHN DOES I-XV,
jointly and severally,
Defendants.

MEMORANDUM AND ORDER

Yohn, J. June , 1997

Plaintiff has filed a motion for "entry of default judgment and hearing on damages" on the ground that the defendants, the Israel Labour Party, Haim Ramon, David Libai, Moshe Shahal and Tova Elinson, were properly served and have now failed to plead or otherwise appear in this action. For the reasons that follow, plaintiff's motion will be denied.

I. DISCUSSION

Plaintiff claims that his process server, Donna Moskowitz, properly served the defendants in Israel between November, 1996 and January, 1997. In this regard, plaintiff attaches to his motion an affidavit of Moskowitz in which she details how she went about serving each defendant. As to Ramon and Shahal, Moskowitz explains that she faxed and mailed a copy of the complaint, certified mail/return receipt requested, in late November, 1996, but was unable to serve the complaint

personally because Ramon and Shahal would not meet her at their Knesset offices. See Pl's Exh. B & C (with certified receipts attached showing that the mail was delivered). As to Elinson, Moskowitz explains that she telephoned Elinson's office in advance to notify Elinson that Moskowitz was coming to the office to serve the complaint and then once there handed the unopened envelope containing the complaint to a secretary and proclaimed "she (Elinson) is served." See Pl's Exh. D. As to Libai, Moskowitz explains that she gave the complaint to Libai's secretary who read it in front of Moskowitz and stated that she would pass it along to Libai. See Pl's Exh. E. Finally, as to the Labour Party, Moskowitz explains that on two different occasions she sent the complaint certified mail/return receipt requested to Shimon Peres, the party's former leader, at the Knesset but never received any notice that the mailing had been properly received. See Pl's Exh. F.

Plaintiff's service of process did not comply with Rule 4(f) of the Federal Rules of Civil Procedure. Rule 4 (f) reads as follows:

(f) Service Upon Individuals in a Foreign Country.

Unless otherwise provided by federal law, service upon an individual from whom a waiver has not been obtained and filed . . . may be effected in a place not within any judicial district of the United States:

- (1) by any internationally agreed means reasonably calculated to give notice, such as those means authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents; or
- (2) if there is no internationally agreed means of service or the applicable international agreement allows other means of service, provided that service is reasonably calculated to give notice:

(A) in the manner prescribed by the law of the foreign country for service in that country in an action in any of its courts of general jurisdiction; or

(B) as directed by the foreign authority in response to a letter rogatory or letter of request; or

(C) unless prohibited by the law of the foreign country, by

(i) delivery to the individual personally of a copy of the summons and the complaint; or

(ii) any form of mail requiring a signed receipt, to be addressed and dispatched by the clerk of the court to the party to be served; or

(3) by other means not prohibited by international agreement as may be directed by the court.

Fed. R. Civ. P. 4 (f).

The Hague Convention mentioned in paragraph (1) is a multilateral, international treaty ratified by twenty-three nations, including the United States and Israel. The primary purpose of the Convention is to provide a simplified way to serve process abroad, to assure that defendants sued in foreign jurisdictions receive actual and timely notice of suit, and to facilitate proof of service abroad. See Volkswagenwerk A.G. v. Schlunk, 486 U.S. 694, 698 (1988). "The primary innovation of the Convention is that it requires each state to establish a central authority to receive requests for service of documents from other countries." Id. at 698-99; Hague Convention, Art. 3. After the "central authority" receives the request, it must serve the documents by the method prescribed by the internal law of the receiving state. See Hague Convention, Art. 5. The "central authority" must then complete a certificate stating that the documents have been served and forward this certificate to the

applicant. Id., Art. 6. If the document has not been served, the certificate must set out the reasons that have prevented service. Id.

Article 10 and Article 19 of the Convention allow for alternative methods of service. They read as follows:

Provided the State of destination does not object, the present Convention shall not interfere with--

(a) the freedom to send judicial documents, by postal channels, directly to persons abroad,

(b) the freedom of judicial officers, officials or other competent persons of the State of origin to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.

(c) the freedom of any person interested in a judicial proceeding to effect service of judicial documents directly through judicial officers, officials or other competent persons of the State of destination.

Hague Convention, Art. 10.

To the extent that the internal law of a contracting State permits methods of transmission, other than those provided for in the preceding articles, of documents coming from abroad, for service within its territory, the present Convention shall not affect such provisions.

Hague Convention, Art. 19.

Thus, under the Convention, use of a "central authority" is not the only way to effect service abroad. The alternative methods outlined in Article 10 and Article 19 and in Rule 4 (f)(2)(C)(i) & (ii) may be used as long as the nation receiving notice has not objected to them and/or they are accepted methods of transmission under its internal laws. See DeJames v. Magnificence Carriers, Inc., 654 F. 2d 280, 288 (3d Cir. 1981) (the more liberal methods provided in Rule 4 (f) may

be used "as long as the nation receiving notice has not objected to them"); see, e.g., Fed. R. Civ. P. 4 (f), Practice Commentary C4-24, p. 66. ("As long as the nation concerned has not, in its ratification or in any other part of its law, imposed any limits on particular methods, or made an unequivocal statement that only specifically listed methods may be used, other methods, like those set forth in paragraph (2) of Rule 4 (f), may be resorted to, as the opening words of paragraph (2) recite.").¹

In its ratification of the Hague Convention, Israel made the following relevant declarations and reservations:

a) The Central Authority in Israel within the meaning of Articles 2, 6 and 18 of the Convention is: The Director of Courts, Directorate of Courts, Russian Compound, Jerusalem;

b) The State of Israel, in its quality as State of destination, will, in what concerns Article 10, paragraphs b) and c), of the Convention, effect the service of judicial documents only through the Directorate of Courts, and only where an application for such service emanates from a judicial authority or from the diplomatic or consular representation of a Contracting State.

Hague Convention, Declaration of the State of Israel.

Based on the foregoing, plaintiff's effectuation of service did not comply with Rule 4 (f) and the Hague Convention. Plaintiff obviously did not forward his complaint directly to the Israeli Director of Courts under Articles 3-6 of the Hague Convention. Instead, plaintiff hired Moskowitz to personally serve the defendants or mail copies of the complaint to them

1. The opening words of paragraph (2) are "unless prohibited by the law of the foreign country." Fed. R. Civ. P. 4 (f)(2)(C).

certified mail/return receipt requested. As for the personal service, it conflicts with Israel's ratification declaration which expressly limits the freedom of plaintiff to serve "judicial documents directly through competent persons of the State of destination" and instead requires that alternative personal service be effected 1) through the Directorate of Courts and 2) after a judicial or diplomatic request from the state of origin.

As for the mailing of the complaint by certified mail/return receipt requested, it is not a valid method of service under Article 10 (a) of the Convention, see, e.g., Bankston v. Toyota Motor Corp., 889 F. 2d 172, 174 (8th Cir. 1989) (finding that the word "send" in Article 10 (a) is not the equivalent of "service of process" in 10 (b) and (c) and therefore paragraph 10 (a) does not provide a basis for the service of process by mail on foreign parties in a lawsuit); Gallagher v. Mazda Motor of America, 781 F. Supp. 1079, 1081 (E.D. Pa. 1992) (interpreting paragraph (a) to provide for the service of subsequent papers after service of process has been effectuated by other means, not for an independent method for the service of process); Raffa v. Nissan Motor Co., 141 F.R.D. 45, 46-47 (E.D. Pa. 1991), and plaintiff has not shown that certified mail/return receipt requested is even a method of transmission

permitted under internal Israeli law. See Hague Convention, Art. 19; Fed. R. Civ. P. 4 (f)(2)(C)(ii).²

In sum, plaintiff has not provided the court with any basis upon which to approve of his service of process on the Israeli defendants. Plaintiff has failed to forward copies of the complaint directly to the Director of Courts in compliance with Articles 3-6 of the Hague Convention and plaintiff has failed to show the court that he has properly followed any of the alternative procedures outlined in Articles 10 and 19 (subject to Israel's limitations) and in Federal Rule of Civil Procedure 4 (f)(2)(C). Thus, plaintiff's service of process on the Israeli defendants was improper and his motion for default judgment will be denied.³

If plaintiff does not complete proper service within sixty (60) days of the date of this order, or show good cause why service has not been made prior to that date, the action will be dismissed for lack of prosecution as to any defendant not properly served.

An appropriate order follows.

2. Plaintiff has altogether failed to cite any Israeli law pertaining to the proper service of process.

3. Because the court will not grant plaintiff's request for default judgment, there is no need for an evidentiary hearing on damages.

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 jointly and severally,
 Defendants.

ORDER

AND NOW, this day of June, 1997, upon consideration of the "motion of plaintiff for entry of default judgment and hearing on damages," to which there was no response by the defendants, it is HEREBY ORDERED that plaintiff's motion is DENIED.

IT IS FURTHER ORDERED that plaintiff is granted leave to complete proper service as to each defendant within sixty (60) days of the date of this order. If any defendant is not properly served within sixty (60) days of the date of this order, or good cause shown why service has not been made, the action will be dismissed for lack of prosecution as to any defendant not so served.

William H. Yohn, Jr., Judge