

WASHINGTON CASE UPDATE

Don't Forget Your Passport: Secretary of State Service May be Preempted by Hague Convention

From the Desk of Kyle Riley: Is service of process by means of Secretary of State service (RCW 46.64.040) effective on a foreign national when the foreign country's laws do not allow service by mail?

Claims Pointer: When traditional means of service are unavailable because the party to be served is a nonresident, service will be considered effective if the party seeking effective service strictly complies with RCW 46.64.040. However, if the means of service violate a treaty, the statute is preempted by the supremacy clause of the Constitution. As this case illustrates, it is wise to take great care when a party is a foreign national to ensure that any applicable treaties are followed.

case in point...

Larson v. Yoon, Case No.71561-5-I, 2015 WL 2085834, May 4, 2015, Washington Court of Appeals, Division 1.

In 2010, Keith and Cynthia Larson ("the Larsons") were in a motor vehicle collision with Kyungsik Yoon in King County. The Larsons were residents of King County but Yoon was a resident of the Republic of Korea ("South Korea"). On June 10, 2013, the Larsons filed a complaint two weeks before the statute of limitations. However, the limitations period is extended for 90 days by statute as long as the defendant is properly served within that time. In accordance with RCW 46.64.040, the Larsons served a summons, complaint, and supporting documents to the Washington Secretary of State and the Secretary of State sent them directly to Yoon's address in Korea on June 14, 2013.

In November, 2013, Yoon moved for summary judgment on the basis that he had not been served within the extended statute of limitations period. Yoon's argument was that service by mail violated the "Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters," ("the Hague Convention") a treaty that is signed by both the United States and South Korea. Under the supremacy clause of the United States Constitution, state law that conflicts with a signed treaty is invalid. The trial court nonetheless denied Yoon's motion and request for reconsideration. Yoon appealed.

The Court of Appeals reversed the trial court, holding that RCW 46.64.040 was preempted by the supremacy clause because the Hague Convention specifically contradicted the process described in RCW 46.64.040. The Court began its analysis by emphasizing that the Washington Supreme Court had held that RCW 46.64.040 is valid only if the party attempting service strictly complies with

the statute, even to a foreign country. The Court did not, however, analyze whether the Larsons complied with the statute, because the statute was preempted as a matter of law in light of Yoon's supremacy clause argument.

In examining the Hague Convention, the Court found that South Korea validly signed the treaty and that it rejected the portions of the convention that allowed an individual or judicial/governmental officers to send judicial documents or to effect service on any person in South Korea. The Court concluded that because service under RCW 46.64.040 requires service by mail, which was prohibited by the Hague Convention as signed by South Korea, the Larsons' attempts were ineffective as a matter of law and the trial court erred by denying Yoon's motion. The Court remanded for further proceedings.



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