

IN THE SUPREME COURT OF THE STATE OF NEVADA

VALVOINDUSTRIA ING. RIZZIO, A
FOREIGN CORPORATION,
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
IN AND FOR THE COUNTY OF
CLARK, AND THE HONORABLE
STEWART L. BELL, DISTRICT JUDGE,
Respondents,
and
RICK BUNCH AND JEREMY NOVOA,
Real Parties in Interest.

No. 43644

FILED

JUL 11 2005

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY *J. Richards*
CHIEF DEPUTY CLERK

ORDER DENYING PETITION
FOR A WRIT OF PROHIBITION

This is a petition for a writ of prohibition challenging the district court's order denying petitioner's motion to quash service of process.

Petitioner Valvoindustria (VIR), an Italian company based in Italy, seeks a writ of prohibition to prevent the district court from exercising personal jurisdiction over it. VIR manufactured an allegedly faulty valve that respondents Rich Bunch and Jeremy Novoa assert contributed to their injuries in an elevator accident in Las Vegas, Nevada. Respondents filed suit in Nevada state court and attempted to serve process on VIR in Italy via international mail.

VIR argues that the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters¹ prohibits service of process abroad by mail. VIR contends that the district court erred in denying its motion to quash service of process. We conclude that the Hague Convention contemplates service of process abroad by mail, and therefore, we deny the writ petition.

This court may issue a writ of prohibition to halt district court proceedings when the proceedings are without or in excess of the district court's jurisdiction.² "[A] writ of prohibition is the appropriate vehicle to challenge a district court's refusal to quash a service of process."³

The Hague Convention exists as a mechanism for signatory nations to serve process abroad.⁴ Both Italy and the United States are signatories to the Convention and have consented to the forms of service delineated in the treaty.⁵ The multilateral treaty provides several methods for litigants to serve documents on foreign defendants. The Convention's provisions are mandatory; thus, failure to comply with treaty articles renders attempted service void.⁶ Two primary objectives of the

¹20 U.S.T. 361, T.I.A.S. No. 6638, 658 U.N.T.S. 163, reprinted in 28 U.S.C., Fed. R. Civ. P. 4.

²Dahya v. Dist. Ct., 117 Nev. 208, 211, 19 P.3d 239, 241 (2001).

³Id.

⁴Hague Convention Art. 1.

⁵Eli Lilly and Co. v. Roussel Corp., 23 F. Supp. 2d. 460, 470, n.13 (D.N.J. 1998);

⁶R. Griggs Group Limited v. Filanto Spa, 920 F. Supp. 1100, 1102 (D. Nev. 1996).

Convention are to simplify and expedite service of process abroad and to ensure timely notice so that a defendant may effectively defend an allegation.⁷

Courts in the United States have split as to whether Article 10(a)⁸ of the Convention permits service of process by international mail.⁹

⁷Alexandra Amiel, Recent Developments in the Interpretation of Article 10(a) of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, 24 Suffolk Transnat'l L. Rev. 387, 390 (2001) (citing Gary B. Born, International Civil Litigation in United States Courts, 796, n.163 (3d ed. 1996) for the proposition that the Convention's stated purpose is to provide notice to a party, not to grant jurisdiction).

⁸Article 10 of the Convention states:

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 the judicial officers, officials or other competent persons of the State of destination.

⁹Bankston v. Toyota Motor Corp., 889 F.2d 172, 174 (8th Cir. 1989), is the leading case holding that the Convention does not permit service of process abroad by mail. Ackermann v. Levine, 788 F.2d 830, 839 (2d Cir. 1986), is the leading case finding that the Convention allows service of process abroad by mail.

The debate turns on the meaning of “send” versus “service;” both terms appear in Article 10 of the Convention. Some courts have determined that the drafters intentionally used two different terms, and therefore, the terms must have different meanings.¹⁰ Other courts have held that the use of “send” rather than “service” may be careless drafting; those courts also look to special commissions on the Convention and Convention commentators that regard service by mail as proper under Article 10(a).¹¹

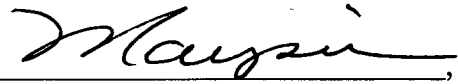
We are persuaded that the better-reasoned court opinions, as well as reports from the Special Commissions on the Convention and the U.S. State Department, support the view that the Hague Convention permits service of process on foreign defendants via mail when both the

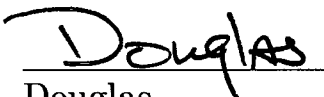
¹⁰Bankston, 889 F.2d at 174; see also Suzuki Motor v. Superior Ct., 249 Cal. Rptr. 376, 381 (Ct. App. 1988); Wasden v. Yamaha Motor Co., Ltd., 131 F.R.D. 206, 209 (M.D. Fla. 1990); Anbe v. Kikuchi, 141 F.R.D. 498, 500 (D. Haw. 1992); Mommsen v. Toro Co., 108 F.R.D. 444, 446 (S.D. Iowa 1985); Cooper v. Makita, U.S.A., Inc., 117 F.R.D. 16, 17 (D. Me. 1987); Golub v. Isuzu Motors, 924 F. Supp. 324, 327 (D. Mass. 1996); Pochop v. Toyota Motor Co. Ltd., 111 F.R.D. 464, 466 (S.D. Miss. 1986); Gallagher v. Mazda Motor of America, Inc., 781 F. Supp. 1079, 1082 (E.D. Pa. 1992); Fleming v. Yamaha Corp., USA, 774 F. Supp. 992, 996 (W.D. Va. 1991).

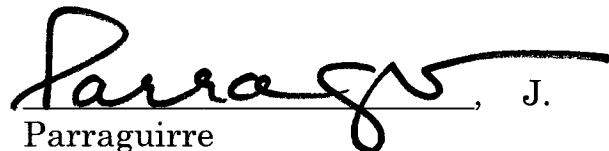
¹¹Ackermann, 788 F.2d at 839; see also, Meyers v. ASICS Corp., 711 F. Supp. 1001, 1007-1008 (C.D. Cal. 1989); Patty v. Toyota Motor Corp., 777 F. Supp. 956, 958-59 (N.D. Ga. 1991); Gapanovich v. Komori Corp., 605 A.2d 1120, 1123 (N.J. Super. 1992); Turick by Turick v. Yamaha Motor Corp., USA, 121 F.R.D. 32, 34-35 (S.D.N.Y. 1988); Hammond v. Honda Motor Co., Ltd., 128 F.R.D. 638, 641 (D.S.C. 1989); Smith v. Dainichi Kinzoku Kogyo Co., Ltd., 680 F. Supp. 847, 850-51 (W.D. Tex. 1988).

sending and receiving countries are parties to the Convention.¹² Therefore, respondents effectively served VIR by international mail to Italy. The district court properly denied VIR's motion to quash service of process.¹³ Accordingly, we

ORDER the petition DENIED.

 J.
Maupin

 J.
Douglas

 J.
Parraguirre

cc: Hon. Stewart L. Bell, District Judge
Lionel Sawyer & Collins/Las Vegas
Crockett & Myers
Clark County Clerk

¹²See R. Griggs, 920 F. Supp. at 1107-1108; see also Teknekron Mgt., Inc. v. Quante Fernmeldetechnik, 115 F.R.D. 175, 177 (D. Nev. 1987) (noting without elaboration that Article 10 allows service of process through normal postal channels).

¹³We note that our decision in Fritz Hansen A/S v. Dist. Ct., 116 Nev. 650, 656-57, 6 P.3d 982, 986 (2000), renders the motion to quash obsolete under ordinary circumstances, such as in this case, when litigation is pending.