

US Supreme Court Holds that Hague Service Convention Permits Service by Mail

On May 22, 2017, the Supreme Court held in *Water Splash v. Tara Menon* that the Hague Service Convention permits service by mail so long as the receiving state has not objected and service by mail is recognized by the jurisdiction hearing the suit. This decision resolves a disagreement in the lower US courts and places service by mail – the easiest and most efficient method of service – on a sound footing.

Background

The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the "Hague Service Convention" or "Convention") is the treaty mechanism by which service of process can be effected in other countries. The treaty standardizes the process by outlining specific mechanisms of service and forestalling inconsistent mechanisms of service. As the US Supreme Court stated in *Aktiengesellschaft v. Schlunk*, 468 US 694 (1988), the "primary innovation" of the Hague Service Convention is that it "requires each state to establish a central authority to receive requests for service of documents from other countries." The central authority then serves or arranges service of the documents.

Water Splash, a company that produced aquatic playgrounds, sued Tara Menon, a former employee, in Texas state court for unfair competition, conversion, and tortious interference with business relations after she left the company to work for a competitor. At the time the suit was initiated, Menon lived in Quebec, Canada. Water Splash obtained permission from the Texas trial court and served her by mail. Menon did not answer or enter an appearance, and the trial court entered a default judgment against her. The trial court then denied Menon's motion to have the judgment set aside on the basis that she had not been properly served.

Menon appealed, arguing that the Hague Service Convention did not permit service by mail. The Texas Court of Appeals agreed with Menon. The US Supreme Court granted review to resolve the varying treatment of service abroad by mail in different jurisdictions across the United States.

The Court's Ruling

Justice Alito, writing for a unanimous Court,¹ vacated the Texas Court of Appeals' decision and remanded the case for determination whether service by mail is permitted under Texas state law. The Court held that the Hague Service Convention permits service by mail, provided that (1) the receiving state does not object and (2) service by mail is authorized by otherwise-applicable state law. The Court noted that the purpose of the Convention is "to simplify, standardize, and generally improve the process of serving documents abroad," and concluded that the "traditional tools of treaty interpretation unmistakably demonstrate that Article 10(a) encompasses service by mail."

¹ Justice Gorsuch did not take part in the decision.

The Court based its decision principally on the plain terms of Article 10 of the Convention, which 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."

The Court explained that, although Articles 10(b) and (c) specifically use the phrase "to effect service" while 10(a) does not, "send" in Article 10(a) is a "broad term," which should not exclude transmitting documents "for a particular purpose" – namely, service.

The Court rejected what it characterized as the "only significant counterargument," that, unlike other Convention provisions, Article 10(a) does not include the word "service" or any variant, and thus "send judicial documents" (in Article 10(a)) should mean something different from "effect service of judicial documents" (in Articles 10(b) and 10(c)). The Court relied on the structure of the Convention; the "more plausible" interpretation that "send" is a "broader concept that includes service but is not limited to it," rather than excluding service; and the fact that the "equally authentic" French text uses the word "adresser," which "has been consistently interpreted as meaning service or notice."

The Court concluded by stating, "To be clear, this [holding] does not mean that the Convention affirmatively *authorizes* service by mail. Article 10(a) simply provides that, as long as the receiving state does not object, the Convention does not 'interfere with . . . the freedom' to serve documents through postal channels. In other words, in cases governed by the Hague Service Convention, service by mail is permissible if two conditions are met: first, the receiving state has not objected to service by mail; and second, service by mail is authorized under otherwise-applicable law."

Implications

The Supreme Court's ruling reinforces the understanding that many practitioners have relied and based their advice upon for some time: service by mail is valid under the Hague Service Convention and should be appropriately responded to by the recipient.

The ruling does not alter the landscape for service to countries that have objected to service by mail, for example, Germany. This is because the Convention expressly provides that states may object to service by mail, and the US Supreme Court's decision in *Water Splash v. Menon* does not undermine those objections. Details of the jurisdictions that have objected to service by mail are available on the Hague Conference on Private International Law web site, <https://www.hcch.net/en/instruments/conventions/specialised-sections/service>. In cases involving jurisdictions that have not objected to service by mail, this method is now an efficient and readily available option.

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