

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

_____)	
RODERICK WEBBER,)	
)	
Plaintiff)	
)	
v.)	Case No. 1:18-cv-00931-LM
)	
EDWARD DECK, ET AL.,)	
)	
Defendants)	
_____)	

MOTION TO QUASH SERVICE OF PROCESS

Defendants Edward Deck, Donald J. Trump for President, Inc., and President Donald J. Trump hereby move the court pursuant to Fed. R. Civ. P. 12(b)(5) to quash the process purportedly served on them. This motion rests on the following grounds:

I. Introduction

This case arises out of an alleged assault and battery at the “Problem Solvers” convention sponsored by No Labels, a 501(c)(4) organization, that took place at the Radisson Hotel in Manchester, New Hampshire. Complaint at ¶¶13, 16. The plaintiff named thirteen defendants, three of whom have already challenged the sufficiency of service of process. *See* Motion to Dismiss (Doc. 11, 03/11/2019). Plaintiff has likewise failed to serve process upon Mr. Deck, Donald J. Trump for President, Inc., or President Trump in accordance with Fed. R. Civ. P. 4. Accordingly, these parties respectfully request an order quashing service.

II. Statement of Facts

A. *Attempted Service Upon Edward Deck*

Mr. Deck is a resident of Greenwich, Connecticut. Plaintiff, Roderick Webber, engaged the services of a process server to serve process on Mr. Deck at 280 Cochran Castle Circle, Pinehurst, North Carolina. Exhibit A. After an unsuccessful attempt to serve Mr. Deck on February 14, 2019, the process server again attempted to carry out service of process on February 15, 2019. *Id.* In neither of the process server's visits to the property did she make contact with Mr. Deck but instead spoke with security guards and "Kim", evidently the office manager for the gated community. *Id.* The process server left the summons and complaint with "Kim" despite having been told that Mr. Deck lives in Connecticut and has not been to the property in about two years and directed that "Kim" mail the summons and complaint to Mr. Deck in Connecticut. *Id.* The process server wrote in her agent notes, "Successful Attempt: Feb 5, 2019, 4:30 pm EST at Corporate: 280 Cochrane Castle Cir, Pinehurst, NC 28374 received by Kim Office manager... I successfully served that office on advisement of the client." *Id.*

B. *Attempted Service Upon Donald J. Trump for President, Inc.*

Donald J. Trump for President, Inc. is organized under the laws of Virginia, with a mailing address of 725 Fifth Avenue, New York, NY 10022. VA State Corporation Commission Search, <https://sccfile.scc.virginia.gov/Business/0792795> (last visited March 15, 2019).

The plaintiff engaged the services of a licensed process server in the State of New York to serve Donald J. Trump for President, Inc. with the summons and complaint. Exhibit B. The process server left the summons at 725 Fifth Avenue, New York City, New York 10022 ("725 Fifth Avenue") with "David G.," evidently a concierge. *Id.* The process server checked the box affirming the following information: "I served the summons on (*name of individual*) David G

(conciierge), who is designated by law to accept service of process on behalf of (*name of organization*) Donald J. Trump for President 725 5th ave NY NY 10022 on (*date*) [blank].” *Id.* The process server’s notes on the proof of service state “As per civil code job was legally served on conciierge because of the high level status of defendant we were not permitted access to business.” *Id.*

The plaintiff also engaged the services of a licensed process server to serve process on the “NH Branch” of the Donald J. Trump for President, Inc. organization. Exhibit C. Donald J. Trump for President, Inc. registered as a foreign nonprofit corporation in the state of New Hampshire on January 19, 2016. N.H. Dep’t of State Business Search, <https://quickstart.sos.nh.gov/online/BusinessInquire/BusinessInformation?businessID=564071> (last visited March 14, 2019). Donald J. Trump for President, Inc. withdrew as a foreign nonprofit corporation on January 13, 2017. Exhibit D. The process server served Laurie Wilmott, purportedly a designated agent of CT Corporation, who could purportedly accept service on behalf of Donald J. Trump for President, Inc. Exhibit C. However, Donald J. Trump for President, Inc. had previously explicitly revoked the authority of its registered agents to accept service on its behalf. Exhibit D.

C. Attempted Service Upon President Donald J. Trump

Plaintiff engaged the services of a licensed process server in the State of New York to serve President Trump with the summons and complaint. Exhibit E. Just as in the case of attempted service upon Donald J. Trump for President, Inc., the process server left the summons at 725 Fifth Avenue with “David G.” *Id.* The process server checked the box affirming the following information: “I left the summons at the individual’s residence or usual place of abode with (*name*) David G (Conciierge) @ 725 5th ave NY NY 10022, a person of suitable age and

discretion who resides there, on *(date)* 02/19/2019, and mailed a copy to the individual's last known address." *Id.* The process server's notes on the proof of service state that "As per civil code job was legally served on concierge because of the high level status of defendant we were not permitted to access residence." *Id.* The proof of service also states that a copy of the summons was mailed to the defendant's last known address. *Id.*

The court can no doubt take judicial notice that President Trump resides at 1600 Pennsylvania Avenue NW, Washington D.C., 20500 (the "White House"). *See* Official Guide to Government Information and Services, White House, <https://www.usa.gov/federal-agencies/white-house> (last visited March 15, 2019). Indeed, the complaint alleges that President Trump's address is the White House, yet the plaintiff attempted to serve process on him at 725 Fifth Avenue. Complaint at ¶3; Exhibit E. President Trump's current occupation is to serve as President of the United States. The White House Website, Donald J. Trump, <https://www.whitehouse.gov/people/donald-j-trump/> (last visited March 15, 2019).

III. Argument

A. Service of Process Did Not Comply With Federal Rule of Civil Procedure 4

An individual "may be served in a judicial district of the United States by:

(1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or (2) doing any of the following: (A) delivering a copy of the summons and complaint to the individual personally; (B) leaving a copy of each at the individual's dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (C) delivering a copy of each to an agent authorized by appointment or by law to receive service of process."

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

A corporation may be served in a judicial district of the United States in the manner prescribed by Federal Rule of Civil Procedure 4(e)(1) for serving an individual. Fed. R. Civ. P.

4(h)(1)(A). Rule 4(e)(1) provides that an individual may be served by “following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made.” Fed. R. Civ. P. 4(e)(1). A corporation may also be served by “by delivering a copy of the summons and complaint to an officer, a managing or general agent, or any other agent authorized by appointment or law to receive service of process.” Fed. R. Civ. P. 4(h)(1)(B).

The returns of service establish that neither of the individual defendants was personally given a copy of the summons and complaint. Nor did plaintiff serve either individual at his usual place of abode (i.e., Greenwich, Connecticut, and the White House) or leave process with a person residing at that abode. According to the returns, “Kim” and “David G.” were employees at places where they received process. Nothing in the returns suggests that “Kim” or “David G.” reside at those places or that either of them had authority by appointment or law to receive service.

As for Donald J. Trump for President, Inc. (the “Campaign”), nothing in the return suggests that “David G.” is an officer or agent of the Campaign. Service on the Campaign therefore did not comply with Rule 4(h)(1)(B).

Because service did not comply with Rules 4(e)(2) for the individuals and Rule 4(h)(1)(B) for the corporate defendant, service consistent with state law under Rule 4(e)(1) is the only way in which service could lawfully be accomplished.

B. Service of Process Did Not Comply With New Hampshire Law

In New Hampshire “[a]ll writs and other processes shall be served by giving to the defendant or leaving at his abode an attested copy thereof, except in cases otherwise provided for.” RSA 510:2. If the defendant is not a resident of New Hampshire, then service of process

may be made by leaving a copy of the summons and complaint with the secretary of state of New Hampshire, provided that notice thereof and a copy of each is sent by registered mail, postage prepaid, by the plaintiff to the defendant at his last known abode or place of business in the state where the defendant resides. RSA 510:4.

In the case of corporations, service under New Hampshire law may be made upon “any principal member or stockholder, or upon any agent, overseer or other person having the care of any of the property or charge of any of the business of the corporation.” RSA 510:14. Foreign corporations may also be served in accordance with RSA 293-A:15.10.

Again, neither of the two individual defendants was personally served a copy of the summons and complaint, and the returns do not support that there was long-arm service under RSA 510:4. As for the Campaign, neither “David G.” nor Ms. Willmott purports to be a principal member, stockholder, overseer, or hold any other status with the Campaign. “David G.” was not served as an agent of the Campaign. Service on Ms. Willmott purported to be on behalf of the “New Hampshire Branch” of “Donald J. Trump for President,” and there is no such entity. The Campaign had previously revoked CT Corporation’s authority to accept service, moreover, so Ms. Willmott was not an agent of the Campaign.

Accordingly, service of process was defective as to all three defendants under the laws of New Hampshire.

C. Service of Process Did Not Comply With New York Law

In New York service of process may be made upon a natural person:

(1) [by] delivering the summons within the state to the person to be served; or (2) by delivering the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an

envelope bearing the legend ‘personal and confidential’; or (3) by delivering the summons within the state to the agent for service of the person to be served as designated under rule 318...”; or (4) by affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode and by either mailing the summons to the defendant served at his last known residence or by mailing the summons by first class mail to the defendant at his actual place of business in an envelope bearing the legend “personal and confidential” if service cannot be made under options one or two; or (5) in such manner as the court, upon motion, directs, if service is impracticable under options one, two, and four.

N.Y. C.P.L.R. 308 (McKinney).

In New York service of process may be made upon a corporation by delivering the summons to an “officer, director, managing or general agent, or cashier or assistant cashier or to any other agent authorized by appointment or by law to receive service.” N.Y. C.P.L.R. 311 (McKinney). Service of process may also be made on the New York Secretary of State for authorized foreign corporations. N.Y. C.P.L.R. 307 (McKinney). If service of process is made upon the secretary of state, that office shall promptly send a copy by certified mail to the person to be served.

Again, there was no personal service on President Trump. The summons and complaint were not served at the President’s last-known residence or place of business, and “David G.” was not served as an agent for the President. The return does not suggest that service was accomplished by affixing to a door or in some other fashion approved by a court.

With respect to the Campaign, neither “David G.” nor Laurie Willmott purports to qualify as an officer, director, cashier or assistant cashier, or agent authorized to receive a copy of the summons. The returns do not state that service was accomplished on the secretary of state.

Service of process was therefore defective as to President Trump the Campaign under the laws of New York.

D. Service of Process Did Not Comply With North Carolina Law

In North Carolina, service of process may be made upon a natural person by:

(i) delivering a copy of the summons and complaint to the person or by leaving copies thereof at the person's dwelling house or usual place of abode with some person of suitable age and discretion then residing therein; (ii) delivering a copy of the summons and complaint to an agent authorized by appointment or law to accept service of process; (iii) mailing a copy of the summons and complaint, registered or certified mail, return receipt requested, addressed to the party to be served; (iv) depositing with a designated delivery service authorized pursuant to 26 U.S.C. §7502(f)(2) a copy of the summons and complaint, addressed to the party to be served, delivering to the addressee, and obtaining a delivery receipt; or (v) mailing a copy of the summons and complaint with signature confirmation of receipt, addressed to the party to be served.

N.C. Gen. Stat. Ann. 1A-1, 4.

Plaintiff attempted to serve Mr. Deck by leaving the summons and complaint with "Kim." There was no personal service, and "Kim" did not reside in Mr. Deck's abode. "Kim" was not served as an agent of Mr. Deck, and the returns do not suggest that plaintiff mailed or deposited "with a designated delivery service" the summons and complaint for service on Mr. Deck.

Service of process on Mr. Deck was therefore defective under North Carolina law.

IV. Conclusion

Defendants respectfully request that the court quash the summonses served upon "David G.," "Kim," and CT Corporation for failure to satisfy the formalities for service of process under Federal Rule of Civil Procedure 4.

