

COURT OF CHANCERY
OF THE
STATE OF DELAWARE

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Jacqueline A. Lardani
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Re: *IMO John P. Arot Estate; Arot v. Lardani*
C.A. No. 12915-MM

Dear Counsel and Litigants:

The successor administrator of an estate filed a complaint against two non-resident defendants, the former administrator and her husband, seeking repayment of a mortgage. Pending before me is the successor administrator's motion to deem service on both defendants perfected. The defendants oppose, arguing they were never properly served. I recommend that the Court grant the motion as to the former administrator and deny the motion as to her husband, without prejudice. I further recommend that the Court order jurisdictional discovery to determine whether the former administrator's husband is amenable to long-arm service of process under 10 *Del. C.* § 3104. This is a final report.

I. Background

John P. Arot (“Decedent”), a Delaware resident, died testate on December 17, 2013.¹ Defendant James A. Lardani, who previously practiced law in Philadelphia, was a longtime friend of Decedent and drafted Decedent’s will.² In that will, Mr. Lardani’s wife, Defendant Jacqueline A. Lardani, was named as the executrix of Decedent’s estate.³ After Decedent’s death, on February 25, 2014, Mrs. Lardani petitioned for, and on May 21, 2014 the Register of Wills for New Castle County issued, letters testamentary identifying Mrs. Lardani as the executrix.⁴ Plaintiff Marc N. Arot has since replaced Mrs. Lardani as successor administrator.⁵

Mr. Arot filed this action on November 17, 2016, seeking to recover an approximately \$70,000 debt that Mrs. Lardani supposedly owes to Decedent’s estate.⁶ Mr. Arot first obtained several summonses and tried to serve them. Noting he had “been unsuccessful in serving the Complaint on the Defendants,” Mr. Arot requested a summons on April 5, 2017, to serve on the Register of Wills under 12 *Del. C.* § 1506.⁷ Mr. Arot served the summons and complaint on the Register of

¹ Docket Item (“D.I.”) 1 (“Compl.”) ¶ 1.

² *Id.* ¶ 1, Ex. C.

³ *Id.* ¶ 2.

⁴ *Id.* ¶ 3. *See also In the Matter of John P. Arot*, 157742 RR, D.I. 7, 9. Because the Register of Wills is a Clerk of the Court of Chancery, filings with the Register of Wills are subject to judicial notice. *See* 12 *Del. C.* § 2501; Del. R. Evid. 202(d)(1)(C).

⁵ Compl. ¶ 12.

⁶ *Id.* ¶¶ 13, 14-49.

⁷ D.I. 5.

Wills on May 23, 2017.⁸ Two days later, the Register of Wills sent a letter to Mrs. Lardani at an outdated address in Philadelphia, not her subsequent Fort Lauderdale address.⁹ As for Mr. Lardani, Mr. Arot argued that he was served by certified mail on June 2, 2017, under 10 *Del. C.* § 3104.¹⁰ There is no record showing either defendant signed for any of these mailings.

Believing service had been accomplished and seeing no response filed by either defendant, Mr. Arot filed a motion for default judgment on December 6, 2017.¹¹ Vice Chancellor Zurn denied the motion on October 29, 2018 finding that Mr. Arot did not effectively serve either defendant.¹² Mr. Arot was given one year to effect service or face dismissal under Court of Chancery Rule 41(e).¹³

After receiving the Court's opinion, Mr. Arot requested a First Pluries Summons for service both on Mrs. Lardani by serving the Register of Wills and under 10 *Del. C.* § 3104 by certified mail, return receipt requested, at her personal residence in Fort Lauderdale and on Mr. Lardani under 10 *Del. C.* § 3104 at the same Fort Lauderdale address.¹⁴

⁸ D.I. 10.

⁹ *In the Matter of John P. Arot*, 157742 RR, D.I. 24.

¹⁰ D.I. 27 ("Mot.") ¶ 3.

¹¹ D.I. 12.

¹² D.I. 22.

¹³ *Id.*

¹⁴ D.I. 23.

On January 8, 2019, Mr. Arot filed the instant Motion to Deem Service Perfected arguing that service should be deemed perfected because (1) certified mailings were sent to the address provided by defendants to this Court in connection with the motion for default judgment, (2) first-class mail copies of the complaint and summons have not been returned, and (3) the defendants' failure (or refusal) to retrieve the certified mailings is active evasion of service, allowing relaxation of the Court's service requirements.¹⁵ The defendants filed an opposition, contending service was still incomplete and Mr. Arot submitted a reply, completing briefing on the Motion, on February 15, 2019. This is my final report.

II. Analysis

The plaintiff "has the burden to show that service of process was effective."¹⁶ Mr. Arot attempts to meet his burden under 12 *Del. C.* § 1506 for Mrs. Lardani and under 10 *Del. C.* § 3104 for both defendants. Under 12 *Del. C.* § 1506, administrators of Delaware estates file "an irrevocable power of attorney designating that Register and the Register's successors in office as the person upon whom all notices and process issued by any court in this State may be served, with like effect as personal service in relation to any suit, matter, cause or thing affecting or pertinent

¹⁵ D.I. 27.

¹⁶ *Boulden v. Albiorix, Inc.*, 2013 WL 396254, at *9 (Del. Ch. Jan. 31, 2013), *as revised* (Feb. 7, 2013).

to the estate in which the letters are issued.” To effectuate service under 12 *Del. C.* § 1506, the Register has to “forward forthwith, by certified mail, return receipt requested, to the address of such executor ... any notices or process served upon the Register.”¹⁷

Under 10 *Del. C.* § 3104, “[w]hen the law of this State authorizes service of process outside the State, the service, when reasonably calculated to give actual notice, may be made: ... (3) By any form of mail addressed to the person to be served and requiring a signed receipt.”¹⁸ “When service is made by mail, proof of service shall include a receipt signed by the addressee or other evidence of personal delivery to the addressee satisfactory to the court.”¹⁹

I find that service of process on Mrs. Lardani has been perfected under both 12 *Del. C.* § 1506 and 10 *Del. C.* § 3104. Because she is a former executrix of a Delaware estate being sued in connection with the estate, Mrs. Lardani is subject to service of process under 12 *Del. C.* § 1506. In accordance with Section 1506, Mr. Arot provided the summons and complaint to the Register and the Register sent it to Mrs. Lardani’s Fort Lauderdale address via certified mail.²⁰ Under the plain language of Section 1506, the Register’s certified mailing ends my inquiry,

¹⁷ 12 *Del. C.* § 1506.

¹⁸ 10 *Del. C.* § 3104(d).

¹⁹ 10 *Del. C.* § 3104(e).

²⁰ Mot. Ex. B.

regardless of whether the certified mail was claimed by Mrs. Lardani. I, therefore, recommend that service of process on Mrs. Lardani be deemed perfected under 15 *Del. C.* § 1506.

For 10 *Del. C.* § 3104, Mr. Arot has shown a *prima facie* case that service on Mrs. Lardani is authorized under 10 *Del. C.* § 3104(c) due to Mrs. Lardani's actions in Delaware personally and in her capacity as a former executrix of a Delaware estate. Under 10 *Del. C.* § 3104(d)(3), Mr. Arot sent the complaint and summons by certified mail to Mrs. Lardani's Fort Lauderdale address but it was not claimed.²¹ Mr. Arot then re-sent the summons and complaint via first-class mail.²² Not only has the first-class mail not been returned as undeliverable but Mrs. Lardani admits that she received it.²³ Thus, under 10 *Del. C.* § 3104(e), I find that Mrs. Lardani's receipt of the first-class mailing is other evidence of personal delivery satisfactory to deem service of process perfected, notwithstanding the unclaimed certified mail.²⁴

The same cannot be said for service of process on Mr. Lardani. Mr. Arot attempted to serve Mr. Lardani under 10 *Del. C.* § 3104(d). As quoted above, 10

²¹ Mot. Exs. A-B.

²² Mot. ¶ 10.

²³ D.I. 29 at ¶¶ 7-8.

²⁴ See, e.g., *Maldonado v. Matthews*, 2010 WL 663723, at * 4 (Del. Super. Feb. 23, 2010) (finding a voicemail from the party served, acknowledging that service had been received, to be other "satisfactory" evidence of personal delivery even though the certified mail was returned as "unclaimed").

Del. C. § 3104(d) begins: “When the law of this State authorizes service of process outside the State[.]” This introductory phrase is not meaningless and requires a *prima facie* showing of an out-of-state defendant’s amenability to service of process under 10 *Del. C.* § 3104(c).²⁵ It is this first hurdle that Mr. Arot has not surpassed.

On the current record, it is difficult to see Mr. Lardani’s connection to the State of Delaware. The record to date, taken in a light most favorable to Mr. Arot, tells of a scheme by which Mrs. Lardani:

- (1) received a loan from the Decedent, a Delaware resident, which was backed by a promissory note and mortgage tied to a Pennsylvania property;
- (2) failed to pay the loan back either before or after Decedent’s death, including while she was serving as executrix to Decedent’s Delaware estate, despite promises to do so;
- (3) transferred the Pennsylvania property to her husband, Mr. Lardani, on the same day as Decedent’s death; and
- (4) moved to Florida to escape liability for her actions.²⁶

²⁵ Cf. *Abajian v. Kennedy*, 1992 WL 8794, at *1, 11 (Del. Ch. Jan. 17, 1992) (holding that an out-of-state defendant “has not and could not be properly served with process” because the plaintiffs did not meet their burden of showing a statutory basis for jurisdiction under 10 *Del. C.* § 3104(c)); *Hoechst Celanese Corp. v. Nat’l Union Fire Ins. Co. of Pittsburgh, Pa.*, 1991 WL 190313, at *3 (Del. Super. Sept. 10, 1991) (“Since [defendant] became subject to long-arm jurisdiction by contracting to insure a Delaware corporation, it follows that service upon [defendant] was effected through substituted service on the Secretary of State.”); *Altech Indus., Inc. v. AI Tech Specialty Steel Corp.*, 528 F. Supp. 521, 523 (D. Del. 1981) (“Since the complaint, liberally construed, alleges a cause of action based upon a tortious injury which may have occurred outside the State of Delaware, service of process is authorized if a defendant ‘regularly does or solicits business, engages in any other persistent course of conduct in the State or derives substantial revenue from services or things used or consumed in the State.’”) (internal citations omitted).

²⁶ See Compl.; D.I. 35 Exs. A-F. Because the question of effective service of process requires a *prima facie* showing of personal jurisdiction akin to an analysis under Court of Chancery Rule 12(b)(2), “I am not limited to the pleadings. Rather, I am ‘permitted to rely upon the pleadings, ... affidavits, and briefs of the parties in order to determine whether the defendants are subject to personal jurisdiction.’” *Sample v. Morgan*, 935 A.2d 1046, 1055-56 (Del. Ch. 2007) (internal

Mr. Lardani's role in the scheme is alleged to be as follows:

- (1) he drafted (or, at least, witnessed) Decedent's will;
- (2) he communicated with Mr. Arot, estate beneficiaries, and counsel regarding the loan, including making representations that payments would be made to the Delaware estate;
- (3) he represented his wife, Mrs. Lardani, in connection with the loan-related negotiations and in her position as executrix and sought payment from the estate in connection with that representation;
- (4) he told Mr. Arot that he may petition the Court of Chancery to have his copy of Decedent's will admitted to probate if Mr. Arot did not provide the original to the Register of Wills;
- (5) he drafted the promissory note for the loan, which was signed and witnessed in Pennsylvania;
- (6) he drafted the mortgage securing the promissory note with the Pennsylvania property and was to record it in Pennsylvania on behalf of Decedent but failed to do so; and
- (7) he received the Pennsylvania property for no consideration on the same day as Decedent's death.²⁷

As is evident in the above summary, many of the allegations about Mr. Lardani's role arise from actions taken outside of the State of Delaware and, presumably, in Mr. Lardani's capacity as a Pennsylvania attorney. Although some of the allegations against Mr. Lardani hint at a Delaware connection (e.g., Mr. Lardani's representation of his wife in connection with the Delaware estate), I find that the current record is insufficient to find that out-of-state service of process on Mr. Lardani was authorized as required under 10 *Del. C.* § 3104(d).

citations omitted). In evaluating the record, I must, and do here, "draw reasonable inferences in favor of the plaintiff." *Id.*

²⁷ See Compl.; D.I. 35 Exs. A-F.

But, my inquiry does not end there. Mr. Arot has asked, in the alternative, for the ability to conduct jurisdictional discovery into Mr. Lardani's amenability to out-of-state service of process should the current record be found insufficient. I recommend that the Court grant that request.

A plaintiff "has no obligation to plead facts that show the amenability of the defendant to service of process."²⁸ As such, a failure to so plead does not automatically bar plaintiffs from jurisdictional discovery into a defendant's amenability to service of process. Rather, the threshold for showing entitlement to jurisdictional discovery is low—" [o]nly where the facts alleged in the complaint make any claim of personal jurisdiction over defendant frivolous, might the trial court, in the exercise of its discretionary control over the discovery process, preclude reasonable discovery in aid of establishing personal jurisdiction."²⁹ I must, therefore, address whether Mr. Arot has provided "the necessary minimum color to the assertion of amenability to suit to permit [Mr. Arot] access to the process of discovery customarily available to parties to litigation."³⁰

Based on the totality of the allegations against Mr. Lardani, I find that Mr. Arot has presented two non-frivolous arguments that out-of-state service of process

²⁸ *Hart Holding Co. Inc. v. Drexel Burnham Lambert Inc.*, 593 A.2d 535, 538 (Del. Ch. 1991).

²⁹ *Id.* at 539.

³⁰ *Id.* at 540.

on Mr. Lardani is authorized: (1) Mr. Lardani transacted business or performed work in the State of Delaware in connection with his drafting of the promissory note, drafting or witnessing of Decedent's will, and/or communications and negotiations with the estate and estate beneficiaries regarding estate administration and payment on the promissory note;³¹ or (2) even if Mr. Lardani is not otherwise amenable to service of process, Mrs. Lardani's conduct should be attributed to Mr. Lardani under the conspiracy theory of jurisdiction and her jurisdictional ties be deemed applicable to Mr. Lardani as her agent and/or co-conspirator.³² Whether these theories will prevail is a decision for another day; but, on the current record, I find that these two theories are non-frivolous and, as such, I recommend that Mr. Arot be permitted reasonable jurisdictional discovery into each.

In so limiting, I note that the successor administrator should not be permitted to engage in a fishing expedition, including to investigate his claims that "it is also believed that [the husband] has either referred personal injury cases in exchange for referral fees or actually practiced law through local counsel in Delaware."³³ These

³¹ See 10 *Del. C.* § 3104(c)(1).

³² Notably, the conspiracy theory of jurisdiction is not an independent basis for jurisdiction but rather "it is a shorthand reference to an analytical framework where a defendant's conduct that either occurred or had a substantial effect in Delaware is attributed to a defendant who would not otherwise be amenable to jurisdiction in Delaware." *Crescent/Mach I Partners, L.P. v. Turner*, 846 A.2d 963, 976 (Del. Ch. 2000) (internal citations and quotation marks omitted).

³³ D.I. 35 ¶ 6.

claims are far outside the complaint's allegations and speculative.³⁴ "Because, as a general matter, '[t]he scope of allowable discovery, of course, is tied to the issues presented in the litigation,' jurisdictional discovery here must relate to the factual allegations in the Complaint" and to the question of Mr. Lardani's amenability to out-of-state service of process under 10 *Del. C.* § 3104.³⁵

III. Conclusion

For the foregoing reasons, I find that service of process on Mrs. Lardani has been perfected and I recommend that the Court deem it so. I further find that Mr. Arot has not met his burden of proving that service of process on Mr. Lardani has been perfected but that Mr. Arot has raised two non-frivolous theories as to Mr. Lardani's amenability to out-of-state service of process that are sufficient to warrant limited jurisdictional discovery. Accordingly, I recommend that the Motion to Deem Service Perfected be granted as to Mrs. Lardani and denied, without prejudice, as to Mr. Lardani. I further recommend that jurisdictional discovery be permitted into whether service of process is authorized under 10 *Del. C.* § 3104 on Mr. Lardani limited to Mr. Arot's non-frivolous theories that Mr. Lardani transacted business or

³⁴ See *Picard v. Wood*, 2012 WL 2865993, at *2 (Del. Ch. July 12, 2012) ("The Plaintiff cannot establish a right to jurisdictional discovery simply by alleging that the Defendant 'might' have engaged in the activities enumerated in the long-arm statute or that 'it is possible' that the Defendant has sufficient minimum contacts in Delaware. Such allegations are mere speculation and could be leveled at virtually any person living in the United States.").

³⁵ *Reid v. Siniscalchi*, 2011 WL 378795, at *4 (Del. Ch. Jan. 31, 2011) (internal citations omitted).

performed work or services in the State of Delaware or is an agent or co-conspirator of Mrs. Lardani such that the conspiracy theory of jurisdiction applies.

This is my final report in this matter, and exceptions should be taken in accordance with Rule 144.

Respectfully,

/s/ Selena E. Molina

Master in Chancery