

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE  
IN AND FOR NEW CASTLE COUNTY**

EDWARD WANG and	)	
CATHERINE WANG, his wife,	)	
Plaintiffs,	)	
	)	
v.	)	C.A. No.: 09C-02-183 FSS
	)	(E-FILED)
B'NAI B'RITH SENIOR CITIZEN	)	
HOUSING, INC.; SPM, LLC; and	)	
JOHN DAVIS,	)	
Defendants.	)	
	)	

Submitted: April 9, 2010  
Decided: July 20, 2010

**ORDER**

**Upon Plaintiffs' Motion to Declare Service as Perfected – *GRANTED***

1. Plaintiffs filed their complaint on February 20, 2009. Three writs of summons were issued on March 12, 2009. B’Nai B’Rith and SPM were properly served. Davis’s writ was returned *non est* on June 7, 2009.

2. On July 7, 2009, Plaintiffs moved for default judgment against Davis. Plaintiffs mailed their motion to Davis’s last known address in Claymont, Delaware. The Prothonotary properly rejected Plaintiffs’ motion because Davis had not been served. On July 13, 2009, however, a man claiming to be Davis appeared

at the prothonotary's office with a copy of Plaintiffs' motion for default judgment . The Prothonotary informed him the motion had been rejected and sent him away without a copy of the complaint.

3. On July 16, 2009, the court granted Plaintiffs' July 13, 2009 motion for enlargement of time. On September 4, 2009, at Plaintiffs' request, the court appointed Monahan Private Investigations ("MPI") as special process server. An alias summons for Davis was issued on October 2, 2009. On October 22, 2009, the court granted Plaintiffs' October 19, 2009 motion for enlargement of time. Again, on February 23, 2010, the court granted Plaintiffs' February 18, 2010 motion for enlargement of time. Both the October 2009 and February 2010 motions were mailed to Davis.

4. MPI swears they tried to serve Davis at his home at least 18 times. Once, Thomas Monahan, MPI's president, spoke with a man at Davis's front door. The man denied he was Davis and insisted John Davis lived in the apartment attached to the house. Later, Monahan spoke with the tenant in that apartment. The tenant showed he was not Davis, and indicated "he rents the apartment from John Davis who lives in the front house." The record is silent about the other 17, failed attempts.

5. Plaintiffs filed this motion to declare service on Davis perfected

on March 19, 2010. They contend that because of their “exhaustive measures” to serve Davis the court should declare service on him perfected. Plaintiffs’ efforts are acknowledged, and they point to Davis’s evasion. By themselves, however, exhaustive measures are not a complete substitute for service.

6. Ten *Del. C.* § 3103(a) provides service on Delaware residents can be perfected according to Super. Ct. Civ. R. 4(f), “by stating the substance of [the summons] to the defendant personally, or by leaving a copy . . . at the defendant’s usual place of abode, in the presence of some adult person.” Due process requires “notice reasonably calculated, under all circumstances, to apprise interested parties . . . of the action and afford them an opportunity” to respond.<sup>1</sup> But, due process rejects “any concept of inflexible procedures universally applicable to every imaginable situation.”<sup>2</sup> Active evasion can justify relaxed service when there is “clear evidence” defendant has been notified.<sup>3</sup>

7. Because neither the sheriff nor MPI left the summons in Davis’s hands or with an adult at his home, proper service means the summons’s substance was stated to Davis personally. The court is not concerned whether someone read

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<sup>1</sup>*Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950).

<sup>2</sup>*Cafeteria and Restaurant Workers Union v. McElroy*, 367 U.S. 886, 895 (1961).

<sup>3</sup>*See Gambone v. Lite-Rock Drywall Corp.*, 124 F. App’x 78, 80 (3rd Cir. 2005).

Davis the summons, but whether it is reasonably likely this action’s basic facts were ever represented to Davis, either orally or on paper, such that he knows he has been sued.<sup>4</sup>

8. The court assumes, without deciding, that if Davis were a nonresident, service would have been perfected.<sup>5</sup> Additionally, had Thomas Monahan left the summons at Davis’s feet during their likely run-in, the court further assumes, without deciding, service would have been perfected.<sup>6</sup> Davis, however, is a Delaware resident and Thomas Monahan did not leave the summons with Davis when they met.

9. Plaintiffs tried hard to serve Davis, apparently with some success. While neither the sheriff, nor the special process server placed the summons in Davis’s hands or dropped it at his feet, Plaintiffs’ agent made direct contact with Davis at Davis’s door, and they diligently mailed Davis their motion for default

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<sup>4</sup>See 4A CHARLES ALAN WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1095 (3d ed. 2010) (asserting that when defendant evades or refuses service, relaxed standards are sufficient if the “objective of giving notice to the party to be served” is met).

<sup>5</sup>See 10 Del. C. § 3104(e); see also *Maldonado v. Matthews*, 2010 WL 663723, at \*1 (Del. Super. Feb. 23, 2010) (Cooch, J.) (declaring service perfected despite plaintiff’s failure to obtain a signed receipt evidencing proper service).

<sup>6</sup>See *Gambone*, 124 F. App’x at 80 (“[A]fter . . . thwarted attempts at personal service—which clearly demonstrated . . . active evasion of service—leaving the papers on the doorstep after the door was slammed and announcing ‘you have been served’ was sufficient personal service.”) (internal citations omitted).

judgment , two motions for enlargement of time, and this motion to declare service perfected. Plaintiffs attached the complaint and summons to this motion. The record is silent as to what happened to those mailings. It is likely, however, that Davis knew that he was being sued and he personally returned the motion for default judgment to the Prothonotary. Davis most likely received his mail, including the complaint and summons. Additionally, after he identified himself as John Davis, the Prothonotary told Davis an action was pending against him. Thus, Davis's face-to-face interactions with the Prothonotary and MPI probably notified him directly of this lawsuit, twice. And, he received the details of the complaint by mail. All the circumstances point to Davis's having been repeatedly told, directly and indirectly, that he was being sued and why, but Davis has been consciously evading service. Taking everything into account, the court is confident Plaintiffs, in effect, made service on Davis.

10. As mentioned, the court does not hold that Plaintiffs perfected service just because they tried hard. Their 18 attempts to serve Davis all days of the week, at different hours, merely help to show that Defendant Davis was consciously evading service.

For the foregoing reasons, Plaintiffs' motion to declare service perfected is **GRANTED**.

**IT IS SO ORDERED.**

/s/ Fred S. Silverman

Judge

oc: Prothonotary (Civil Division)  
pc: Joseph J. Longobardi, III, Esquire  
Robin M. Grogan, Esquire  
John Davis, *Pro Se* Defendant (via U.S. Mail)