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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

In Re:

LLS AMERICA, LLC,

Debtor,

BRUCE P. KRIEGMAN, solely in his  
capacity as court-appointed Chapter 11  
Trustee for LLS America, LLC,

Plaintiff,

v.

ZDENEK SLANIN AND VERA  
SLANINA,

Defendants.

NO: 2:12-CV-422-RMP

Bankr. Case No. 09-06194-PCW11

Adv. Proc. No. 11-80094-PCW11

ORDER DENYING MOTION TO  
VACATE JUDGMENT

BEFORE THE COURT is Defendants' Motion to Vacate Judgment, ECF  
No. 26. The Court has reviewed the motion, the record, and is fully informed.

BACKGROUND

After Defendants failed to adequately respond to this suit, the U.S. District  
Court Clerk entered an Order of Default, ECF No. 14. On December 7, 2012, the

1 Court entered a Default Judgment against the Slaninas. *See* ECF Nos. 21 and 22.  
2 On March 23, 2013, an Order to Register Foreign Judgment was entered against  
3 Defendants (and Plaintiff argues that it was personally served on Defendants).  
4 ECF No. 29-2.

5 On February 21, 2017, Defendants filed the present challenge to this Court's  
6 personal jurisdiction over them and argue that the Court should vacate the prior  
7 judgment as invalid pursuant to FED. R. CIV. P. 60(4) and (6). *See* ECF No. 26.

#### 8 ANALYSIS

9 Service is governed by FED. R. CIV. P. 4, which states in relevant part:

10 **Serving an Individual in a Foreign Country.** Unless federal law  
11 provides otherwise, an individual--other than a minor, an incompetent  
12 person, or a person whose waiver has been filed--may be served at a  
13 place not within any judicial district of the United States:

14 (1) by any internationally agreed means of service that is reasonably  
15 calculated to give notice, such as those authorized by the Hague  
16 Convention on the Service Abroad of Judicial and Extrajudicial  
17 Documents;

18 (2) if there is no internationally agreed means, or if an international  
19 agreement allows but does not specify other means, by a method that is  
20 reasonably calculated to give notice:

21 (A) as prescribed by the foreign country's law for service in that  
country in an action in its courts of general jurisdiction;

(B) as the foreign authority directs in response to a letter rogatory or  
letter of request; or

(C) unless prohibited by the foreign country's law, by:

(i) delivering a copy of the summons and of the complaint to the  
individual personally; or

(ii) using any form of mail that the clerk addresses and sends to the  
individual and that requires a signed receipt; or

(3) by other means not prohibited by international agreement, as the  
court orders.

FED. R. CIV. P. 4.

1 Pursuant to subsection (f)(1), our inquiry begins with the Hague Convention.

2 Article 10 of the Convention, the English text of which reads as follows:

3 “Provided the State of destination does not object, the present  
Convention shall not interfere with—

4 “(a) the freedom to send judicial documents, by postal channels,  
directly to persons abroad,

5 “(b) the freedom of judicial officers, officials or other competent  
persons of the State of origin to effect service of judicial documents  
6 directly through the judicial officers, officials or other competent  
persons of the State of destination,

7 “(c) the freedom of any person interested in a judicial proceeding to  
effect service of judicial documents directly through the judicial  
8 officers, officials or other competent persons of the State of  
destination.”

9 *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504, 1508 (2017) (quoting 20 U.S.T., at  
10 363. Although the Hague Convention “liberalized service of process in  
11 international civil suits,” *Brockmeyer v. May*, 383 F.3d 798, 801 (9th Cir. 2004), it  
12 does not, by itself, provide an affirmative answer to what specific types of service  
13 are allowed in a particular case. It must be read in conjunction with the laws of the  
14 forum where the case is pending. As the Ninth Circuit Court of Appeals stated in  
15 *Brockmeyer v. May*, 383 F.3d at 804:

16 [W]e must look outside the Hague Convention for affirmative  
17 authorization of the international mail service that is merely not  
18 forbidden by Article 10(a). Any affirmative authorization of service by  
international mail, and any requirements as to how that service is to be  
19 accomplished, must come from the law of the forum in which the suit  
is filed.

20 As stated in Article 10 of the Hague Convention and as recognized in  
21 *Brockmeyer*, the Hague Convention permits service of process by international  
mail. *See id.* at 808. Furthermore, Plaintiff provided the Court with a copy of

1 Canada's Accession Document to the Hague Convention, which states that  
2 "Canada does not object to service by postal channels." *See* ECF No. 29-3 at 2.  
3 Considering that this case was pending in U.S. District Court, we find the  
4 requirements of this forum within FED. R. CIV. P. 4. "Service by international mail  
5 is affirmatively authorized by Rule 4(f)(2)(C)(ii), which requires that service be  
6 sent by the clerk of the court, using a form of mail requiring a signed receipt."  
7 *Brockmeyer v. May*, 383 F.3d at 808.

8 In this case, the deputy clerk for the U.S. Bankruptcy Court for the Eastern  
9 District of Washington certified "that a copy of the Summons and Complaint was  
10 mailed by international registered mail with Returned Receipt for International  
11 Mail" to both Defendants who now challenge personal jurisdiction. Plaintiff  
12 provided documents "showing receipt of the summons and complaint by the  
13 Slaninas on August 12, 2011."

14 Defendants urge the Court to read the language from FED. R. CIV. P. 4(f)(C):  
15 "unless prohibited by the foreign country's law" as requiring that all service  
16 provided in Canada from other countries adhere to the domestic rules for suits  
17 within Canada. This interpretation would conflict with the statements within the  
18 Hague Convention and FED. R. CIV. P. 4. "Unless prohibited by" is not to be  
19 understood as being the same as "explicitly provided for." Through the Hague  
20 Convention, Canada stated that service by mail is not "prohibited" in Canada.  
21 Accordingly, Plaintiff properly adhered to the requirements of FED. R. CIV. P.

1 4(f)(2)(C)(ii) by having the clerk of court serve process by international registered  
2 mail with return receipts.

3 Although the Court finds that it had personal jurisdiction over Defendants in  
4 this matter, the Court has considered other factors that would also require the  
5 denial of Defendants' motion. First, Defendants were personally served with an  
6 Order to Register a Foreign Judgment in March of 2013. They fail to state why  
7 they have waited nearly four years to challenge this Court's jurisdiction pursuant to  
8 FED. R. CIV. P. 60, which requires that a motion be made within a "reasonable"  
9 time. The Court finds that Defendants' unexplained delay is unreasonable.

10 Additionally, Defendants failed to substantively respond to Plaintiff's  
11 argument that Defendant consented to suit by filing a proof of claim in the  
12 underlying bankruptcy case before venue was transferred to this judicial district.  
13 The Court has no basis to dispute Plaintiff's assertion that Defendants consented to  
14 the Court's personal jurisdiction by filing their proof of claim.

15 The Court finds that Defendants were properly served, and that the  
16 Judgment entered against them was procedurally and jurisdictionally valid.

17 Accordingly, **IT IS HEREBY ORDERED THAT:**

18 Defendants' Motion to Vacate Judgment, **ECF No. 26**, is **DENIED**.

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ORDER DENYING MOTION TO VACATE JUDGMENT ~ 5

1 The District Court Clerk is directed to enter this Order, provide copies to  
2 counsel, and **CLOSE** this case.

3 **DATED** this 14th day of July 2017.

4 *s/ Rosanna Malouf Peterson*  
5 ROSANNA MALOUF PETERSON  
United States District Judge

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