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## Grupo Fasma v. The Eighth Judicial Dist. Ct. of the State of NV, 132 Nev. Adv. Op. 29 (Apr. 21, 2016)

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*Grupo Fasma v. The Eighth Judicial Dist. Ct. of the State of NV*, 132 Nev. Adv. Op. 29 (Apr. 21, 2016)<sup>1</sup>

## CONSTITUTIONAL LAW: Service of Process; Foreign Company; Hague Convention

### **Summary**

Merely because service of process complies with the Hague Convention does not necessarily mean that it complies with constitutional Due Process. Here, the district court failed to conduct adequate fact-finding necessary to determine whether service of process complied with constitutional Due Process. Accordingly, the Court issued a writ of prohibition instructing the district court to vacate its order denying Grupo's motion to quash so that an evidentiary hearing may be held on the matter.

### **Background**

In this matter, B.E. Uno, LLC ("Uno") owned a shopping center in Las Vegas, NV. Famsa, Inc. ("Famsa") leased commercial retail space at the shopping center. Petitioner Grupo Famsa ("Grupo"), a publicly traded Mexican company, guaranteed the Famsa lease. Famsa failed to comply with the lease and Uno filed a complaint against both Famsa and Grupo in district court for breach of the lease and the guaranty.

Because both the United States and Mexico are signatories to the Hague Convention, Uno served Grupo through the procedures outlined in the Hague Convention. These procedures include designating a "Central Authority" in the country of service who will then serve the defendant according to its own local laws. Here, the Mexican Central Authority issued service upon a woman named Claudia Palomo Martinez stating that she was an employee in Grupo's legal department. Grupo filed a motion to quash service, stating that Martinez is a hostess employed to greet customers.

Grupo argued that because Martinez is not an agent, officer, or representative of Grupo, service of process was constitutionally deficient. Uno argued that service complied with both Mexican law and the Hague Convention. The district court denied Grupo's motion to quash stating that Grupo was properly served under Mexican law and the Hague Convention, and that service satisfied constitutional Due Process.

### **Discussion**

Grupo argued that service of process was constitutionally deficient because Martinez was not an agent, officer, or representative so integrated within Grupo. Uno counter argued that American Due Process was incorporated into the Hague Convention, and thus, satisfying the requirements of the Hague Convention satisfied constitutional Due Process. The Nevada Supreme Court rejected Uno's argument but also rejected Grupo's standard for what constitutes constitutional service of process.

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<sup>1</sup> By Kristen D. Matteoni.

<sup>2</sup> *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950).

Due Process requires notice that is reasonably calculated “to apprise the interested parties of the pendency of the action and afford them an opportunity to present their objections.”<sup>2</sup> Thus, while it is relevant whether a person receiving process for Grupo is an agent, officer, or representative of Grupo, it is only useful in determining whether notice was reasonably calculated to inform Grupo of the pendency of action. Thus, Martinez need not have been an agent, officer, or representative, if service was reasonably calculated to inform Grupo of the action.

Additionally, a certificate of compliance by a foreign nation’s central authority does not necessarily satisfy constitutional Due Process. Merely because the Hague Convention applies, does not necessitate that a constitutional inquiry is inappropriate or unnecessary. The Court further acknowledged that many jurisdictions have held that whether service complies with the Constitution is a separate question from whether service complies with the Hague Convention.

Therefore, the Court holds that where the Hague Convention applies, service of process must comply with both the Constitution and the Hague Convention. Thus, while Uno may have abided by the service procedures of the Hague Convention, the Mexican Central Authority’s service efforts may have been constitutionally insufficient. Accordingly, an evidentiary hearing is appropriate to determine whether Uno’s service was reasonably calculated to apprise Grupo of the pendency of the action.

### **Conclusion**

A certificate of compliance from a foreign nation’s central authority does not guarantee compliance with constitutional Due Process. Here, the district court failed to conduct necessary fact-finding to determine whether service of process complied with constitutional Due Process requirements. Accordingly, the Court issued a writ of prohibition instructing the district court to vacate its order denying Grupo’s motion to quash service of process so that an evidentiary hearing may be held on the matter.

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<sup>2</sup> Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 314 (1950).