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### Summary of Loeb v. First Judicial District Court, 129 Nev. Adv. Op. 62

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## CIVIL PROCEDURE: SERVICE OF PROCESS

### **Summary**

The Court considered a petition for a writ of prohibition or mandamus challenging a district court order denying a motion to serve individual defendants by publication. The question before the court was whether a party residing outside of the United States may be served by publication pursuant to NRCP 4(e)(1)(i) and (iii), rather than under the terms of the Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters when the party's address is known.<sup>2</sup>

### **Disposition**

The plain language of NRCP 4(e)(1)(iii) requires a party serving process by publication to mail the summons and complaint to any defendant whose address is known. Thus, any party serving process to a party who resides outside of the United States must transmit judicial documents abroad, triggering the requirement that the party serving process comply with the provisions of the Hague Convention.

### **Factual and Procedural History**

This writ petition arose from a derivative suit brought by petitioner Alex Loeb on behalf of Universal Travel Group, a company incorporated in Nevada, against the officers and directors of Universal Travel Group—the Jiang Parties. The Jiang parties all reside in China.

After filing the complaint, Loeb unsuccessfully attempted to locate the Jiang parties in Nevada and subsequently sought their addresses from Universal Travel Group. Universal Travel Group refused to disclose the addresses and declined to accept service on behalf of the Jiang parties. Loeb moved the district court pursuant to NRCP 4(e)(1) to permit service by publication. Universal Travel Group opposed Loeb's motion, arguing that he was required to comply with the terms of the Hague Convention.<sup>3</sup> However, Universal Travel Group's counsel later provided Loeb with the Jiang parties' addresses in China.

The district court denied Loeb's motion to permit service by publication on the basis that such service is not allowed by the Hague Convention when a Defendant's address is known. Thus, the district court ordered Loeb to serve the Jiang parties in compliance with the terms of

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<sup>1</sup> By Casey J. Stiteler.

<sup>2</sup> NEV. R. CIV. P. 4(e)(1)(i), (iii). The Hague Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters art. 1, Nov. 15, 1965, 20 U.S.T. 361 [hereinafter Hague Convention].

<sup>3</sup> Under the terms of the Hague Convention, a party in a foreign country may be served (1) "through the central authority of the receiving country," (2) "through diplomatic or consular agents that the receiving country considers non-objectionable," or (3) "by any method permitted by the internal law of the receiving country." *Dahaya v. Second Judicial Dist. Court*, 117 Nev. 208, 212, 19 P.3d 239, 242 (2001) (internal quotation marks omitted) (citing Hague Convention art. 5, 8-11, 19, 20 U.S.T. at 362-65).

the Hague Convention. Loeb subsequently filed this petition for a writ of mandamus or prohibition.

## **Discussion**

### *Interpretation of the Hague Convention*

The Court first interpreted the language of the Hague Convention.<sup>5</sup> The Court determined that the Hague Convention applies if the state's service rules require "the transmittal of documents abroad" in order for service to be deemed complete.<sup>6</sup> Accordingly, the Court determined that the Hague Convention does not apply if service of process is "valid and complete" domestically under the applicable state rules, so long as the service satisfies due process.<sup>7</sup> The Court reasoned that if the Hague Convention applies, any inconsistent state law methods of service are preempted.<sup>8</sup> Thus, the Court determined that if NRCP (4)(e)(1) requires the transmittal of documents abroad, the Hague Convention will control.

### *Interpretation of NRCP 4(e)(1)*

The Court then turned to the issue of whether or not NRCP 4(e)(1) requires judicial documents to be transmitted abroad in order for service to be complete. Under NRCP 4(e)(1)(iii), when a plaintiff serves a party by publication and the party's address is known, a copy of the summons and complaint must also "be deposited in the post office, [and] directed to the person to be served at the person's place of residence."<sup>9</sup> Additionally, NRCP 4(e)(1)(iii) states that service of process is not complete until four weeks after a copy of the summons and complaint have been deposited in the post office.<sup>10</sup> The Court interpreted the plain language of NRCP(4)(e)(1) to require that the party serving process must complete publication and mail the documents to the defendant's address.

### *Application of NRCP 4(e)(1)*

The Court determined that because Loeb knew the Jiang parties' addresses, Nevada's rules required Loeb to mail copies of the summons and complaint to the Jiang parties before service by publication could be deemed complete. Because the Jiang parties live in China, doing so constitutes the transmittal of judicial documents for service abroad, and thus triggers the Hague Convention.

## **Conclusion**

The Court denied the petition for a writ of prohibition or mandamus.

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<sup>5</sup> Interpretation of an international treaty is a question of law the court reviews de novo. *Garcia v. State*, 117 Nev. 124, 127, 17 P.3d 994, 996 (2001).

<sup>6</sup> *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 700 (1988).

<sup>7</sup> *Id.* at 707.

<sup>8</sup> *Id.* at 699.

<sup>9</sup> NEV. R. CIV. P. 4(e)(1)(iii).

<sup>10</sup> *See id.*