LITIGATION

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Another Possible Problem Caused by Covid-19: Check the Accuracy of Your Address for Service of Process with State Authorities and Avoid Default Judgments

By Cary Stewart Sklaren and E. Taylor Hodges

Commercial entities periodically move their facilities around the United States, from one office or factory or retail outlet to another. When such movement – interstate, or even intrastate – involves large companies with in-house legal staff, or headquarters, or major transfers of personnel, it is traditionally rare for the business to fail to alert the old state about the movement to a new, out-of-state address for service of process.

In the time of Covid-19, however, there is enormous disruption of businesses of all sizes, particularly small and medium-sized businesses, and numerous closures of places of business in many locations. It is crucial for such businesses to inform state authorities of the new address, in-state or out-of-state, to which service of process should be sent. If the address of an entity – whether a corporation, limited liability company, or other form of business requiring state authorization – is outdated, and process in a lawsuit is served at the old location, the entity may never get notice of lawsuit and may be subject to a default judgment. The same problem could occur for the change of address of a "registered agent," whether a service company, a law firm, another entity, or an individual.

While a default judgment can often be vacated in many states (see the two examples below), it will unnecessarily result in legal fees and expenses, and even possible disclaimer by carriers if the lawsuit involved an insured matter. A recent intermediate New York appellate opinion, not involving a carrier, is a case in point and a timely reminder of the importance of these issues due to the economic impact of Covid-19.

A Narrow Escape, But Long Delayed

In *Golden Eagle Capital Corp. v. Paramount Mgt. Corp.*[1], the plaintiff commenced a lawsuit to foreclose a mortgage on a condominium unit owned by the defendant. Pursuant to New York law, plaintiff served the defendant with process through the Secretary of State. Defendant failed to answer and about ten months later plaintiff moved to enter a default. In opposition, defendant cross-moved and asserted it did not receive a copy of process and had no actual notice of the lawsuit until receipt of the motion papers mailed to the condominium. The trial court granted the default judgment and denied the cross-motion. After a series of motions for reargument, the case reached a New York intermediate appellate court.

In rejecting the plaintiff's argument, the appellate court held that the defendant was entitled to relief from its default. Although the address on file with the Secretary of State at the time the summons and

[1] *Golden Eagle Capital Corp. v. Paramount Mgt. Corp*., 2020 N.Y. Slip Op. 03770 (N.Y. App. Div. 2d Dep't Jul. 8, 2020). A copy of the opinion may be accessed at http://www.nycourts.gov/reporter/3dseries/2020/2020_03770.htm.

complaint were served was incorrect, and defendant did not receive actual notice in time to defend itself, the appellate court found there should be no default. The evidence, the court indicated, did "not suggest that the defendant's failure to update its address with the Secretary of State constituted a deliberate attempt to avoid service of process," and the defendant met its burden of demonstrating the existence of a meritorious defense.

The *Golden Eagle* litigation began in July 2014, and the appellate opinion was issued on July 8, 2020, six years thereafter. And now the case still must be determined on its merits. The mere filing of a change of address form with the New York Secretary of State would have eliminated the improper address problem.

Another Lesson Learned

A similar situation occurred in Texas, where a restaurant corporation, Cremona Bistro ("Cremona"), leased space in a commercial building owned by Katy Venture, Ltd. ("Katy").[2] After a fire destroyed the building in 2008 and Cremona sought compensation, the insurer for Katy denied the claim. Cremona then sued Katy because the fire originated in an area under the owner's exclusive control.

The restaurant first attempted to serve Katy by certified mail, through its registered agent under Texas law, using the address on file with the Secretary of State's Office, but was unsuccessful. After other attempts at service, Cremona served process on the Secretary of State, which forwarded the process by mail to the outdated address. Katy and a related defendant had moved several years earlier, but never updated their address. As a result, a default judgment was entered against them for more than $820,000. The Texas Supreme Court ultimately reversed the default judgment and remanded the case for trial regarding Katy's alleged negligence, seven years after the precipitating fire. Just as in *Golden Eagle*, the filing of a change of address form with Texas authorities would have eliminated the improper address problem and seven years of litigation prior to trial.

A Default Not Vacated

There are many cases, just like these two, all over the country, including some where the default judgments were not vacated. In one example, the Court of Appeals of North Carolina affirmed the order of the trial court declining to set aside a default judgment resulting from an incorrect address to which notice was sent.[3] Adopting a very narrow reading of the service statute, the Court explained: "service on a corporation is, for all intents and purposes, effective 'from and after the date of the service on the Secretary of State.'" It did not matter that the defendant did not receive timely notice of the lawsuit.

While the laws and regulations of each state must be scrutinized with care and complied with, the lesson to be learned remains the same: when a business closes or moves from one place to another, update the address for service of process with state authorities as necessary. ◆

For more detailed analysis on a wide range of legal issues, please see Schnader's Covid-19 Resource Center at www.schnader.com/blog/covid-19-coronavirus-resource-center.

[2] *Katy Venture Ltd. v. Cremona*, 469 S.W.3d 160 (Tex. 2015). A copy of the opinion may be accessed at https://scholar.google.com/scholar_case?case=7289980774227861157&q=1.%09Katy+Venture+Ltd.+v.+Cremona&hl=en&as_sdt=6,33&as_vis=1.

[3] *Builders Mut. Ins. Co. v. Doug Besaw Enters*., 775 S.E.2d 681, 686 (N.C. Ct. App. 2015). A copy of the opinion may be accessed at https://scholar.google.com/scholar_case?case=10806569999183131274&q=.+Builders+Mut.+Ins.+Co.+v.+Doug+Besaw+Enters&hl=en&as_sdt=6,33&as_vis=1.

For more information about Schnader's Litigation Services Department or to speak with a member of the firm, please contact:

Anne E. Kane
Co-Chair, Litigation Services Department
215-751-2397
akane@schnader.com

Stephen J. Shapiro
Co-Chair, Litigation Services Department
215-751-2259
sshapiro@schnader.com

Cary Stewart Sklaren
Partner
212-973-8033
csklaren@schnader.com

E. Taylor Hodges
Associate
215-751-2019
thodges@schnader.com

www.schnader.com

* *See: www.schnader.com/jakarta*