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Signed, Sealed, Delivered, I’m Yours? Practical Insight for Defendants on the Propriety of Out-of-State Service Via Certified Mail Without Restricted Delivery in Pennsylvania

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A recent opinion from the U.S. District Court for the Western District of Pennsylvania has renewed the debate over what constitutes sufficient service of Pennsylvania process on an out-of-state defendant via certified mail. A business should not assume that a plaintiff has properly served it just because the plaintiff produces a signed certified mail receipt. Rather, businesses should investigate whether plaintiffs followed the proper procedures for service by certified mail and should research whether the person who signed for the mail was authorized to do so.

Recently, in *Fox v. Chipotle Mexican Grill, Inc.*, the federal court highlighted a basis for potentially challenging the propriety of service by certified mail. The court held the plaintiffs’ failure to use the restricted delivery option when attempting to serve an out-of-state corporation via certified mail rendered service improper under Pennsylvania law.¹

In *Fox*, plaintiffs attempted to serve a Pennsylvania state court class action complaint against Chipotle at its corporate headquarters in Newport Beach, California via certified mail. A contract security guard at the corporate headquarters signed the certified mail return receipt; however, Chipotle had not authorized the security guard to accept legal process on its behalf. Two days later, plaintiffs had a sheriff serve a copy of the complaint on the person in charge of a Chipotle location in Pittsburgh, Pennsylvania. Twenty-nine days after plaintiffs personally served Chipotle in Pittsburgh, but thirty-one days after plaintiffs purportedly served Chipotle by certified mail in California, Chipotle removed the case to federal court. Arguing that the thirty-day deadline to remove ran from the date the security guard in California signed the certified mail receipt, plaintiffs challenged the removal as untimely.

Under Pennsylvania Rule of Civil Procedure 404, a plaintiff may serve service of process outside the Commonwealth “by mail in the manner provided by Rule 403.” Rule 403 requires that “a copy of the process shall be mailed to the defendants by any form of mail requiring a receipt signed by the defendant or his authorized agent. Service is complete upon the delivery of the mail.” The official note to Rule 403 further states “the United States Postal Service provides for restricted delivery mail, which can only be delivered to the addressee or his authorized agent. Rule 403 has been drafted to accommodate the Postal Service procedures with respect to restricted delivery.”

When a sender mails a letter by certified mail, the Postal Service must obtain the signature of the person – any person – who accepts delivery of the letter, but has no obligation to confirm that the person who accepts the letter is the addressee or an authorized agent of the addressee. The Postal Service only must deliver certified mail to the addressee or an authorized

agent if the sender selects (and pays the extra fee for) the restricted delivery option. Because the plaintiffs in *Fox* did not select the restricted delivery option when they sent the complaint by certified mail, the Postal Service delivered it to a security guard, who was not an authorized agent of Chipotle. The *Fox* court held that plaintiffs' attempted service via certified mail was improper; therefore, Chipotle timely removed the complaint after the plaintiffs properly served it in Pennsylvania.

When analyzing a challenge to the sufficiency of the recipient of service via certified mail, the federal courts in Pennsylvania, including the *Fox* court, have interpreted Rule 403 as requiring the use of the restricted delivery option in order to effectuate proper service on out-of-state defendants. Certified mail alone, due to its lack of specific restrictions on the signatory, does not conform to the requirements set forth in Rules 404 and 403.

The *Fox* court also reiterated that a defendant does not need to "post a person at all hours to receive service." If the addressee or registered agent was unavailable to sign for the service, the plaintiffs had alternative options to effectuate service. Those other options included presenting a refusal to sign for service under Rule 405, or sending papers by sheriff to an alternative location (which plaintiffs eventually did). Ultimately, because plaintiffs' service via certified mail was improper, they failed to establish their burden of proof for proper service resulting in the denial of their motion to remand.

That said, the federal courts have not yet addressed a situation where a plaintiff fails to require restricted delivery, but an authorized agent nevertheless signs the certified mail receipt. Nor have any reported opinions addressed a situation where a sender selects restricted delivery when it mails process but the person who signs for the mail is not an authorized agent of the addressee. Rather, the *Fox* opinion deals with the situation where the person who signs a certified mail receipt is not an authorized agent to accept service for a defendant. In these situations, where a defendant challenges the propriety of service, the federal courts in Pennsylvania agree that proper service via certified mail requires restricted delivery.

Pennsylvania state courts also have not definitively resolved the issue. While the two state appellate courts have questioned whether the official note to Rule 403 should govern, the courts expressed those concerns in situations where the signatories held themselves out as agents of the defendants.² The state trial courts appear to be split on this issue.

In situations where challenging the propriety of service makes practical sense, a plaintiff's failure to require restricted delivery of certified mail could be an additional arrow in defense counsel's quiver. More generally, out-of-state defendants served with a Pennsylvania lawsuit by mail should consider: (1) investigating whether the plaintiff utilized restricted delivery; (2) identifying the person who signed for the mail; (3) analyzing whether the defendant had authorized the signatory to accept service; (4) determining whether the plaintiff effectuated service by other means; and (5) analyzing what effect, if any, the potential improper service may have on the initial litigation strategy.

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¹ No. 2:20-cv-1448, 2021 U.S. Dist. LEXIS 33782 (W.D. Pa. Feb. 23, 2021).

² In *Davis v. Walker*, 167 A.3d 309 (Pa. Commw. Unpub. May 24, 2017), the person who signed the certified mail receipt represented that he was an agent of the defendant. Similarly, in *Leupold v. Galvin*, No. 00060, 1988 Pa. Super. LEXIS 3834 (Pa. Super. Ct. Dec. 22, 1988), while the court rejected a defendant's assertion that restricted delivery was necessary for valid service, the individual that signed the certified mail receipt was an authorized agent to accept process.