

IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR MIAMI-
DADE COUNTY, FLORIDA

CIRCUIT CIVIL DIVISION

CASE NO.: 11-09045 CA 30

SAFRA NATIONAL BANK OF NEW YORK,
a national banking association,

Plaintiff,

v.

CRYSTAL SPRINGS PARTNERS, LTD., a
foreign corporation; *et al.*,

Defendants.

ORDER ON SERVICE OF PROCESS

This cause having come before the Court on the Motion of Plaintiff Safra National Bank of New York (“Safra” or “Plaintiff”) for entry of an order (1) permitting service of process on Defendant Jomart Kamenov (“Kamenov”) through a contractually designated agent; (2) for enlargement of time to file affidavit in support of substituted service of process on Defendant Crystal Springs Partners, LTD (“Crystal Springs”); (3) and for an order permitting alternative service of process on Crystal Springs by international express mail via the Hague Service Convention of 15 November 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters (the “Hague Service Convention”).

SERVICE ON KAMENOV’S CONTRACTUALLY DESIGNATED AGENT

Safra’s Motion states that the Guaranty being sued upon provides that Defendant Kamenov designated Steven L. Cantor, Esq, as his lawful agent in the State of Florida for service of process. As a result, Safra requests entry of an Order permitting service of process upon Mr. Cantor pursuant to the terms of the Guaranty.

Specifically, the Guaranty, executed and delivered by Jomart Kamenov and attached to the Complaint as Exhibit D, provides that “Guarantor irrevocably designates and appoints Steven L. Cantor, Esq, having an address of 1001 Brickell Bay Drive, Suite 2908 Miami, Florida 33131 as their lawful agent in the State of Florida who may be served with personal service or certified mail, return receipt requested, and who may accept and receive on behalf of the Guarantor, all process with respect to any action, suit or proceeding that may be brought against Guarantor, in the Florida State Courts or the Florida Federal Courts, and Guarantor agrees that such service of process and the acceptance or receipt of such agent shall be valid, effective and binding in every respect as if personally served upon the Guarantor within the state.” *See* Guaranty at Section 10.

Accordingly, pursuant to the *explicit* terms of the Guaranty and Florida law, Plaintiff may effectuate service of process upon Defendant Kamenov by serving Steven L. Cantor, Esq. “It is now well settled that there is no constitutional impediment to service on a contractually appointed agent for service of process...” *Leasefirst v. Allied Machinery of South Florida Inc.*, 597 So. 2d 415, 416 (Fla. 4th DCA 1992); *National Equipment Rental Ltd. v. Szukhent*, 375 U.S. 311 (1964); *see also Southwest Cycle Sales Inc. v. Gold Key Marketing Inc.*, 265 So. 2d 390 (Fla. 3d DCA 1972). This is consistent with precedent from the U.S. Supreme Court holding that service of process can be made pursuant to such an appointment. *See, e.g., National Equipment Rental v. Szuhent*, 375 U.S. 311, 315 (1964) (approving service on agent for service of process appointed in contract between the parties).

Plaintiff provided Mr. Cantor with a notice of the hearing of the motion and also indicated that its attorneys conferred with Mr. Cantor and personally advised him of the motion and suggested that he appear at the hearing to raise any objections—if he had any to make. Despite being given the opportunity, Mr. Cantor did not attend the hearing. Additionally, Mr.

Cantor has not submitted any proof to the Court indicating that he has formally resigned as Defendant Kamenov's registered agent.

The Court thus finds that Florida law presents no barrier to service of process on a contractually designated agent, and thus permits Safra to serve Mr. Cantor as Defendant Kamenov's lawful agent pursuant to the express terms of the Guaranty

**ENLARGMENT OF TIME TO FILE AFFIDAVIT IN
SUPPORT OF SUBSTITUTED SERVICE OF PROCESS**

Plaintiff Safra also seeks an enlargement of time in which to perfect service of process on Crystal Springs by filing an affidavit in support of substituted service under Section 48.161. Because the postal service has not yet returned to Plaintiff the return receipts necessary to comply with the requirements of Section 48.161(1), Florida Statutes, the Court hereby exercises its authority to enlarge the time for the filing of the affidavit in support of substituted service under Section 48.161 by ninety (90) days. The granting of this enlargement of time does not prejudice any of the parties to this action.

SERVICE BY INTERNATIONAL EXPRESS MAIL VIA HAGUE SERVICE CONVENTION

In addition to the methods of service described above, Safra seeks to attempt service on Crystal Springs via international express mail pursuant to Section 48.194, Florida Statutes, which governs service of process outside the state. Section 48.194 provides, in pertinent part:

Service of process on persons outside the United States may be required to conform to the provisions of the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

Compliance with the Hague Service Convention is mandatory when transmitting documents for service abroad. *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705 (1988). Article 10(a) of the Hague Service Convention provides that, "if the State of destination

does not object, the Hague Convention does not change the freedom to send judicial documents, by postal channels, directly to persons abroad.” *TracFone Wireless, Inc. v. Bequator Corporation, Ltd.*, 717 F.Supp.2d 1307, 1309, citing *Curcuruto v. Cheshire*, 864 F.Supp. 1410, 1411 (S.D. Ga. 1994).

After review of the United Kingdom’s position with respect to the Hague Service Convention, the Court thus finds that the United Kingdom *does not object* to judicial documents being sent by postal channels pursuant to Article 10(a). *See Brockmeyer v. May*, 383 F. 3d 798 (9th Cir. 2004); *see also* U.S. State Dep’t, *Judicial Assistance in the United Kingdom (England, Scotland, Wales, and Northern Ireland)*, in *Selected Materials in Int’l Litig. & Arbitration*, 689 PLI/Lit. 13, 325 (2003). This lack of objection is imputed to the United Kingdom’s overseas territory, the British Virgin Islands. *See Richardson v. Attorney General of the British Virgin Islands*, 2010 WL 2949438, at *1 (D. Virgin Islands, July 23, 2010) (relying on United Kingdom’s signatory status in applying Article 10 of Hague Service Convention to service in British Virgin Islands).

The Court further notes that, while there are no Florida *state court* decisions on point for this issue, numerous federal circuit courts and district courts—including the Southern District and several other district courts within the Eleventh Circuit—have held that Article 10(a) of the Hague Service Convention permits service by mail unless the country has objected to this method. *TracFone*, 717 F.Supp.2d at 1309, *citing Curcuruto*, 864 F.Supp. at 1411; *Conax Florida Corp. v. Astrium Ltd.* 499 F.Supp.2d 1287, 1293 (M.D. Fla. 2007) (authorizing service by mail upon finding that “Article 10(a) is applicable to service of process.”); *Lestrade v. U.S.*, 945 F.Supp.2d 1557 (S.D. Fla. 1996) (service of IRS petition by mail satisfied Hague Service Convention); *see also Brockmeyer*, 383 F.3d at 802 (Article 10(a) does include service of process

by mail, reasoning that “send judicial documents” encompasses “service of process,” and that such method is “consistent with the purpose of the Convention to facilitate international service of judicial documents.”); *Research Systems Corp. v. IPSOS Publicite*, 276 F.3d 914, 926 (7th Cir. 2002), *cert. denied*, 537 U.S. 878 (2002); *Ackermann v. Levine*, 788 F.2d 830, 838-40 (2nd Cir. 1986); *Robins v. Max Mara, U.S.A., Inc.*, 923 F. Supp. 460, 469 (S.D.N.Y. 1996); *Borschow Hosp. and Medical Supplies, Inc. v. Burdick-Siemens Corp.*, 143 F.R.D. 472 (D.P.R. 1992); *Patty v. Toyota Motor Corp.*, 777 F.Supp. 956 (N.D. Ga. 1991); *Chrysler Corp. v. General Motors Corp.*, 589 F.Supp. 1182 (D.D.C. 1984).¹

The Court thus finds that serving Defendant Crystal Springs with a copy of the Summons and Complaint sent via international express mail directed to their President, General Manager, or other executive officer at its headquarters is permissible pursuant to the Hague Service Convention and Section 48.161(1), Florida Statutes.

Accordingly, it is **ORDERED AND ADJUDGED** that the Motion is **GRANTED**. The Court hereby **ORDERS** that:

(a) Safra may effectuate service of process on Defendant Jomart Kamenov by serving his designated agent for service of process in the United States, Steven L. Cantor, Esq., who

¹ *But see Nuovo Pignone, SpA v. Storman Asia M/V*, 310 F.3d 374, 384 (5th Cir. 2002); *Bankston v. Toyota Motor Corp.*, 889 F.2d 172, 174 (8th Cir. 1989); *Intelsat Corp. v. Multivision TV LLC*, 736 F.Supp.2d 1334, 1342-43 (S.D. Fla. 2010). However, the Court notes that Plaintiff has submitted a letter from the United States Department of State Administrative Office of the United States Courts, dated March 14, 1990 in response to the *Bankston* decision, wherein the United States Department of State stated its belief “that the decision of the Court of Appeals in *Bankston* is incorrect to the extent that it suggests that the Hague Convention does not permit as a method of service of process the sending of a copy of a summons and complaint by registered mail to a defendant in a foreign country.” See March 14, 1990 letter from Alan J. Kreczko, Deputy Legal Advisor, United States Department of State, to Administrative Office of the United States Courts attached to Safra’s Motion as Exhibit E. The views of the State Department should be given special weight in construing treaties. See, e.g., *Sumitomo Shoji Am., Inc. v. Avagliano*, 457 U.S. 176, 184–85 (1982); *Bush v. United States (The Yulu)*, 71 F.2d 635, 636 (5th Cir. 1934); see also 1 RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 112 cmt. c, at 59 (1987).

presently maintains his business address at 1001 Brickell Bay Drive, Suite 3112, Miami, Florida 33131.

(b) Safra shall have an additional ninety (90) days from the date of filing of this Order to comply with the requirements of perfecting substituted service on Defendant Crystal Springs in support of substituted service pursuant to Section 48.194, Florida Statutes; and,

(c) pursuant to Section 48.194, Florida Statutes and Article 10(a) of the Hague Service Convention, Safra may serve Defendant Crystal Springs by sending via United States postal service international express mail, one copy of: (1) Safra's Complaint; (2) Summons to Crystal Springs; (3) Civil Cover Sheet; and, (d) this Order; and (e) Affidavit, along with a cover letter provided by Safra to Defendant Crystal Springs.

DONE AND ORDERED in Chambers at Miami, Florida this ___ day of May, 2011.

CONFORMED
MAY 13 2011
Judge Lester Langer
Circuit Court Judge
HON. LESTER L. LANGER
CIRCUIT COURT JUDGE

Service List

Aaron S. Weiss, Esq.
Carlton Fields, PA
Miami Tower, Suite 4200
100 S.E. Second Street
Miami, Florida 33131
Attorneys for Plaintiff

Steven L. Cantor, Esq.
Cantor & Webb P.A.
1001 Brickell Bay Drive, Suite 3112
Miami, Florida 33131
Registered Agent for Jomart Kamenov

Crystal Springs Partners, Ltd.
5053 Fisher Island Drive
Miami, Florida 33109
Attn: Jomart Kamenov