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Current Developments in Cross-Border Litigation | Service of Process on a Foreign Party

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In *Lucero v. Wheels, Limited*, 2023 WL 8622293 (5th Cir. Dec. 13, 2023), Plaintiffs sought to serve the defendant in India. Plaintiffs tried to serve through two international process service companies and the Central Authority in India under the Hague Convention, which were not successful. Plaintiffs asked the court to allow service by electronic means under FRCP 4 (f) (3), which was denied because Plaintiffs “failed to demonstrate due care or good cause for failure to effect timely service”. Plaintiffs were granted over 10 court orders extending the service deadline. Nonetheless, the district court dismissed the case without prejudice and Plaintiffs appealed. The Fifth Circuit analyzed whether there was “a clear record of delay or contumacious conduct by Plaintiffs” to determine if dismissal was justified. The court noted that Plaintiffs did not cause the delay, abided by court deadlines, requesting extensions as needed, the delay would not unduly prejudice defendant because the evidence showed it was aware of the case, and there was nothing in the record to indicate the failure to serve process was intentionally caused by Plaintiffs. Therefore, the court vacated the dismissal because the failure to effect service was not contumacious and reversed denial to serve through electronic means.

In Federal Court, Rule 4 governs manner of service and a plaintiff must pay careful attention to how to serve process and when alternative means are available when servicing foreign parties.

Related People



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