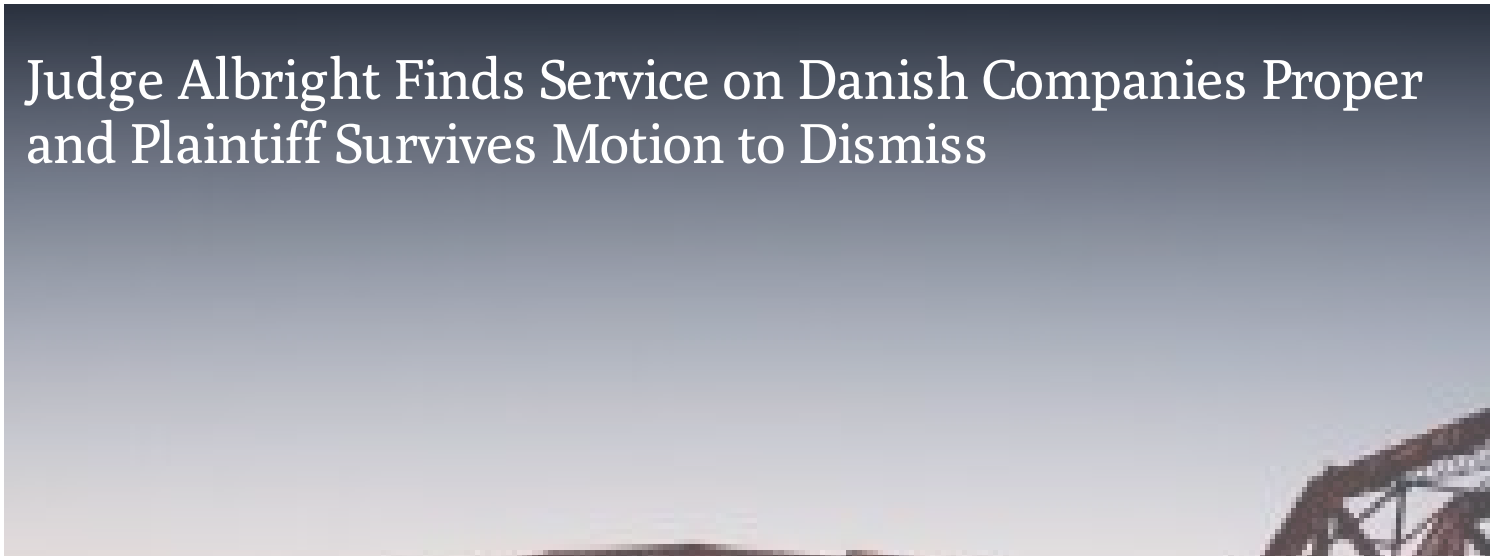
WINSTON & STRAWN LLP

BLOG

Judge Albright Finds Service on Danish Companies Proper and Plaintiff Survives Motion to Dismiss



JUNE 12, 2020

On January 6, 2020, Plaintiff, an Israeli company headquartered in Jerusalem, attempted to serve Defendants, Danish corporations headquartered in Copenhagen, by submitting a request for service to the Clerk of Court. The Clerk mailed a copy of the Summons and Complaint to Defendants' Danish headquarters via Federal Express, which was marked delivered on January 16, 2020. Defendants did not dispute the receipt of the Summons and Complaint. Instead, Defendants contended that this method of service was improper and moved to dismiss the case pursuant to Fed. R. Civ. P. 12(b)(5).

There are three methods to serve a corporation under Rule 4(f): (1) by any internationally agreed means of service, such as those authorized under the Hague Convention; (2) if there is no internationally agreed upon means, by a method that is reasonably calculated to give notice unless prohibited by the foreign country's law; or (3) by other means not prohibited by international agreement, as the court orders. Both the United States and Denmark are part of the Hague Convention, and the Supreme Court of the United States previously found that the Hague Convention service by mail "is permissible if two conditions are met: first, the receiving state has not objected to service by mail; and second, service by mail is authorized under otherwise-applicable law." *Water Splash, Inc. v. Menon*, 137 S. Ct. 1504, 1513 (2017).

The court first held that Plaintiff sufficiently showed that Denmark has not objected to service by mail; thus, service was proper under the first condition laid about by the Supreme Court in *Water Splash*. Second, the court found that service by mail is permitted under the laws of both the United States and Denmark. Specifically, when determining whether service is proper in a foreign country, the majority view is that a method of service is not "prohibited" unless it is *expressly prohibited* by a foreign country's laws. Both Plaintiff and Defendants provided translation of a Danish law that did not expressly prohibit mail as a form of service.

Defendants objected to Plaintiff's proffered witness translating Danish statutes because the witness did not properly authenticate the translations under the Federal Rules of Evidence. Despite this objection, the court noted Defendants did not object to the accuracy of the translations and Defendants' own translations did not controvert those of Plaintiff's witness.

In sum, the court found Plaintiff met its burden and denied Defendants' motion to dismiss for improper service of process.

Densys Ltd. v. 3Shape Trios A/S and 3Shape A/S, No. 6:19-cv-680 (June 4, 2020)

2 Min Read

Authors

Ahtoosa Amini Dale

Danielle Williams

Related Locations

Dallas

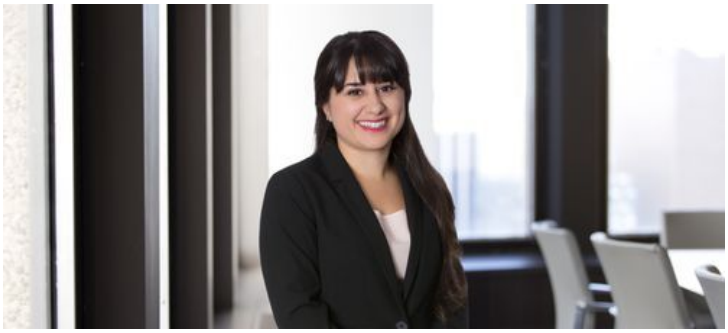
Related Capabilities

Patent Litigation | Intellectual Property | Technology, Media & Telecommunications

Related Regions

North America | Europe | Middle East & Africa

Related Professionals



Ahtoosa Amini Dale

Danielle Williams

This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.

© 2024 Winston & Strawn LLP.