

Court Finds Service of Process on Foreign Corporation's U.S. Subsidiary Would Be Improper

JULY 22, 2020

Plaintiff UNM Rainforest Innovations (UNM) filed suit against Defendant D-Link Corporation (D-Link), a Taiwanese company, that has its principal place of business in Taiwan. D-Link does not maintain a registered agent in the United States, but does operate "International Offices," such as a U.S. subsidiary office located in California. The California office operates through a subsidiary company called D-Link Systems, Inc. (D-Link Systems). UNM filed a motion for leave to effect alternative service on D-Link by sending the complaint and other required materials to D-Link's headquarters in Taiwan and to its United States subsidiary.

There are three methods to serve a corporation under Rule 4(f): (1) by any internationally agreed-upon 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. Taiwan is not a signatory to the Hague Convention, or any other treaty related to international service of judicial documents; thus, options under the Hague Convention were not available.

Because Taiwan does not prohibit the service of process by mail, and service of process by mail comports with the due process requirements of the United States, the Court determined that UNM could serve the complaint and related materials to D-Link's headquarters in Taiwan. However, UNM was not permitted to serve the complaint and related materials to D-Link's subsidiary in California. The Fifth Circuit does not allow one to serve a foreign corporation's domestic subsidiary in place of serving the foreign corporation abroad unless the domestic subsidiary is the agent or alter ego of the foreign corporation. The Fifth Circuit developed a 14-factor test in order to determine whether a subsidiary is the alter ego of its parent. In short, UNM must show that these factors, when taken in the aggregate, indicate that D-Link so dominated D-Link Systems that the Court is justified in disregarding the corporate separation of the two companies. UNM failed to provide sufficient evidence that would prove that D-Link Systems is an alter ego or agent of D-Link.

In sum, the Court permitted UNM to serve D-Link by sending the complaint and related materials to its headquarters in Taiwan, but found service on D-Link's subsidiary would be improper.

UNM Rainforest Innovations v. D-Link Corp., Case No. 6:20-cv-143 (July 13, 2020)

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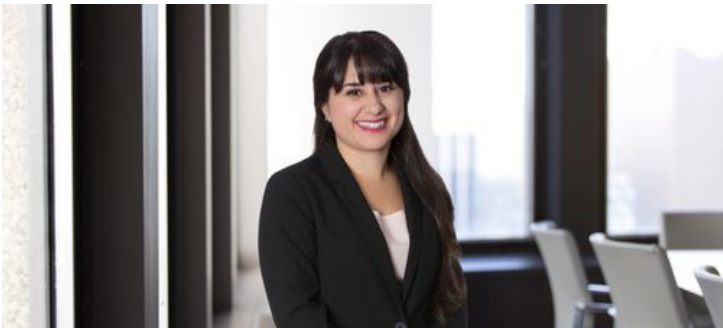
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