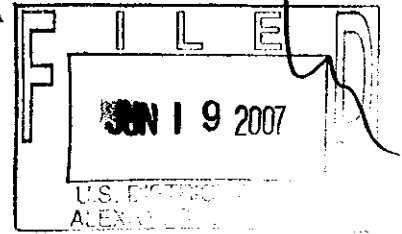


IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION



United States Securities and )  
Exchange Commission )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
International Fiduciary )  
Corp., S.A., et al )  
 )  
Defendant. )

CIVIL ACTION NO. 06-1354

MEMORANDUM ORDER

THIS MATTER is before the Court on the Defendant Malcolm Cameron Boyd Stevenson's Motion To Quash Service. This case concerns the alleged conduct of Defendants International Fiduciary Corporation, Daniel Eric Byer, Malcolm Cameron Boyd Stevenson, and Preston David Pinkett in violation of (1) Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934, (2) Section 17(a)(1) of the Securities Act of 1933, (3) Section 17(a)(2) and (3) of the Securities Act of 1933, and (4) Section 5(c) of the Securities Act of 1933. The issue before the Court is whether the Court should grant Defendant Stevenson's Motion To Quash Service. The Court holds that Defendant's Motion To Quash Service is denied because service by the Plaintiff sent by Federal Express to Stevenson's last known address, provided by British Columbia Securities Commission, and served on Stevenson's

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children at two addresses in British Columbia conformed with (1) the Hague Convention and (2) constitutional Due Process.

### I. BACKGROUND

Defendant Stevenson is a resident of British Columbia. The Court on December 4, 2006 entered a temporary restraining order and other emergency relief against all of the Defendants. (Decl. Of A David Williams, ¶ 2). Federal Express served the Temporary Restraining Order, Summons, and Complaint on Defendant Stevenson's last known address on December 5, 2006, but the papers were returned. (*Id.* at ¶ 3). In a similar case brought by the British Columbia Securities Commission in Canada, the defendant retained counsel. (*Id.* at 4). The Canadian counsel refused to accept service of process on December 9, 2006. (*Id.*).

On January 23, 2007, the Plaintiff served the Summons, Complaint, Preliminary Injunction, and the Order Directing Appointment of a Receiver upon Stevenson in care of his two children at two homes, a Duncan Avenue and a Rock Hill Place address, in British Columbia. (*Id.* at 3). The Rock Hill Place address is also the known address of Stevenson's wife. (*Id.*). The Defendant Stevenson, on March 1, 2007, filed a response to the complaint entitled, "Affidavit of Malcolm Cameron Boyd Stevenson in Support of a Notice and Demand to Dismiss for Lack of Personal Jurisdiction." This Court is treating the response as a motion to quash service. See *Fvorhees v. Fischer and*

*Krecke*, 697 F.2d 574 (4th Cir. 1983).

## II. DISCUSSION

### A. Standard of Review

A party may make a motion to dismiss a complaint for insufficiency of service of process. See FED. R. CIV. P. 12(b)(5). Service upon an individual not within any judicial district of the United States may be effected by any internationally agreed means reasonably calculated to give notice, such as those means, authorized by the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents ("Hague Convention"). FED. R. CIV. P. 4(f)(1). Article 10(a) of the Hague Convention states, "Provided the State of destination does not object, the present Convention shall not interfere with . . . (a) the freedom to send judicial documents, by postal channels, directly to persons abroad."

### B. Analysis

The Court holds that Defendant's Motion To Quash Service is denied because service was effected upon the Defendant by sending process using Federal Express to Stevenson's last known address, provided by British Columbia Securities Commission, and served on Stevenson's children at two addresses in British Columbia. This service of process conformed with (1) the Hague Convention and (2) constitutional Due Process.

First, the Plaintiff provided proper service to Defendant

Stevenson when service was sent by Federal Express to his last known address, provided by British Columbia Securities Commission, and when service of process was given to Stevenson's children at two addresses in British Columbia, one of which is also the known address for Stevenson's wife because Article 10(a) of the Hague Convention allows service of a summons by mail where such service is otherwise authorized. Article 10(a) of the Hague Convention states, "Provided the State of destination does not object, the present Convention shall not interfere with . . . (a) the freedom to send judicial documents, by postal channels, directly to persons abroad." Canada, as a signatory of the Hague Convention, permits service of process in a lawsuit by mail and does not object to service of a lawsuit by mail under the Hague Convention.

The Court finds persuasive the line of cases that interpret "send" to include service of process to commence a lawsuit. See, e.g., *Ackerman v. Levine*, 788 F.2d 830, 839 (2d Cir. 1986) (deciding that the word send in Article 10(a) was intended to include service); See also *Weight v. Kawasaki Industries Ltd.*, 597 F. Supp. 1082, 1085 (E.D. Va. 1984) (holding that service of process was effective by direct mail procedure, under the Hague Convention, since Japan did not object to service through postal channels). But see, *Fleming v. Yamaha Motor Corp., USA*, 744 F. Supp. 922, 996 (W.D. Va. 1991) (arguing that the plain language

of Article 10(a) provides only for the sending of judicial documents after a foreign party has been properly served and not for the actual service of process). The Webster's Third New International Dictionary defines "send" as to cause or enable to go and to order or request to go. 2065 (Philip Babcock Gove, Ph.d., ed, Merriam-Webster 1993) (1961).

In this case, a copy of the Summons, Complaint, and Temporary Restraining Order were sent to Stevenson's last known address by Federal Express on December 5, 2006. Also, process was delivered to Stevenson's children at two addresses in British Columbia on January 23, 2007. One of these addresses is the known address for Stevenson's wife.

Furthermore, two other courts have held that serving a defendant in Canada by mail is allowed under the Hague Convention. See *Heredia v. Transport S.A.S., Inc.*, 101 F. Supp. 2d 158, 161-62 (S.D.N.Y. 2000) (holding that service by registered mail in Quebec is adequate service under the Hague Convention); *Curcuruto v. Cheshire*, 864 F. Supp. 1410, 1412-13 (S.D. Ga. 1994) ("Plaintiff's service of the summons and complaint by registered mail [to Defendant in Canada] and the Defendant's receipt and acknowledgment of service are in accordance with the Hague Convention and constitute sufficient service of process.") The Plaintiff provided proper service to Defendant Stevenson when service was sent by Federal Express to

his last known address and when service was given to Stevenson's children at two addresses in British Columbia because Article 10(a) of the Hague Convention allows service of a summons by mail where such service is otherwise authorized.

Second, the Plaintiff's notice conformed with the tenets of Due Process because it was reasonably calculated to apprise the Defendant of the suit against him.

The Plaintiff provided proper notice to Defendant Stevenson by sending service through Federal Express to his last known address, provided by British Columbia Securities Commission, and giving service of process to his children at two addresses in British Columbia, one of which is also the known address for his wife. Due process requires that notice be reasonable calculated to inform the defendant of the pending action and afford the defendant an opportunity to respond. See *Mullane v. Central Hanover Bank & Trust Co.*, 399 U.S. 306, 314 (1950). In this case, the Plaintiff presented evidence of the measures taken to serve Stevenson. Stevenson has apparently received actual notice of this lawsuit because he has filed a responsive motion in this Court. On March 1, 2007, Stevenson filed a response to the complaint entitled, "Affidavit of Malcolm Cameron Boyd Stevenson in Support of a Notice and Demand to Dismiss for Lack of Personal Jurisdiction." Furthermore, the record shows that Defendant Stevenson is aware of the lawsuit and Magistrate Judge Thomas

Rawles Jones, Jr. concluded that the Defendant is aware of the lawsuit and actively trying to evade service.

Thus, based upon the above mentioned facts, the Plaintiff's notice to the Defendant that this lawsuit is pending conformed with the tenets of Due Process and the Hague Convention.

### III. CONCLUSION

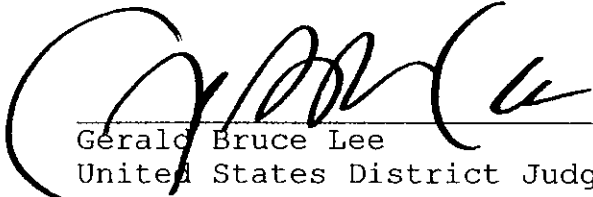
The Defendant's Motion To Quash Service is denied because service was properly effected by the Plaintiff sending the process to Defendant Stevenson by Federal Express to his last known address, provided by British Columbia Securities Commission; it was served on Stevenson's children at two addresses in British Columbia and conformed with (1) the Hague Convention and (2) constitutional Due Process.

For the foregoing reasons, it is hereby

ORDERED that Defendant Stevenson's Motion to Quash Service is DENIED.

The Clerk is directed to forward a copy of this Order to counsel of record.

Entered this 19<sup>th</sup> day of June, 2007.

  
Gerald Bruce Lee  
United States District Judge

Alexandria, Virginia  
6/19/07