Appeal Court OKs Process Service of Foreign Corporations Through California Subsidiaries

by Kirke M. Hasson and Jeffrey Jacobi

A recent California appellate decision holds that under certain circumstances a foreign parent corporation may be served through its California subsidiary, without following the Hague Service Convention.

A recent California Court of Appeals opinion, *Yamaha Motor Co. v. Superior Court of Orange County*, 174 Cal. App. 4th 264 (2009), might breathe new life into a forgotten law, that, in certain circumstances, allows a plaintiff to serve process on a foreign corporation simply by serving its California subsidiary—without complying with the Hague Convention on service abroad. Although this decision does not appear to affect other established rules of personal jurisdiction, it invites plaintiffs suing foreign corporations with California affiliates to ignore the legal principles and procedures of the Hague Service Convention, and requires foreign parent corporations to be alert to the receipt of service documents by their California affiliates.

California Corporations Code § 2110 provides that delivery by hand of a copy of process to a foreign corporation's "general manager in this state . . . shall constitute valid service on the corporation." The Hague Service Convention, by contrast, provides for a more elaborate process to effectuate service on a foreign corporation.

In *Yamaha*, the Fourth Appellate District of the California Court of Appeal held that this provision of the Corporations Code, among other statutes, allows service of process on a Japanese corporation by serving its California subsidiary as its "general manager in this state," without need for the plaintiff to comply with the provisions of the Hague Service Convention. This result came as a surprise, even to the court itself. Although the court's first impression was that serving the domestic subsidiary as the agent of the foreign parent "just seemed too easy a way to get around the Hague Service Convention," on review, the court found "it really is that easy," as a "nonoverruled, nondistinguishable California Supreme Court case . . . makes service on the California representative of a foreign parent valid as to the foreign parent under California law," stated the court.

The court was referring to the decision in *Cosper v. Smith & Wesson Arms Co.*, 53 Cal.2d 77 (1959), which has not been discussed much since it was decided 50 years ago. In *Cosper*, the California Supreme Court held that service on the sole California salesman for a Massachusetts manufacturer constituted valid service on the manufacturer. Even though the salesman contracted with the manufacturer on a "non-exclusive basis," the court considered him the manufacturer's "general manager" in California. In addition, the court found that the representative had "ample regular contact" with the manufacturer, and thus it was "reasonably certain" he would apprise the manufacturer of the service.

The *Yamaha* court found that the relationship between the salesman and the manufacturer in *Cosper* was "far less intimate, far less connected, and far less interrelated" than the relationship between Yamaha's Japanese parent and its California subsidiary. The subsidiary was wholly owned by the Japanese parent and acted as "the exclusive importer and distributor of Yamaha vehicles" in the United States, providing a number of services for Yamaha vehicles in the United States and receiving all customer complaints and accident reports for the United States involving Yamaha vehicles. For this reason, the court was reasonably certain that the subsidiary would apprise the Japanese parent of any service in California.

The noteworthy element of the *Yamaha* opinion is its ruling about what California State law permits. To reach its result, however, the *Yamaha* court also discussed federal law under the United States Supreme Court case, *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694 (1988). *Schlunk* held that when service is valid under state law on the U.S. subsidiary of a foreign manufacturer, there is no need to also serve papers in accord with the Hague Service Convention. Citing *Schlunk*, the *Yamaha* court determined that because service on the Japanese parent was valid under California law, the plaintiff need not comply with the Hague Service Convention.

The court cautioned those who wish to effect service through the *Cosper* method that compliance with the Hague Service Convention would likely increase the chances that a judgment would be enforced abroad. The *Yamaha* court also expressed reluctance to reach its result, but noted that, as an intermediate appellate court, it was bound by *Cosper*. Although the court itself welcomed the California Supreme Court to revisit this rule, the California Supreme Court declined this invitation, denying Yamaha's petition for hearing.

If you have any questions about the content of this advisory, please contact the Pillsbury attorney with whom you regularly work or the attorneys below.

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