

STATE OF VERMONT  
ORANGE COUNTY SS.

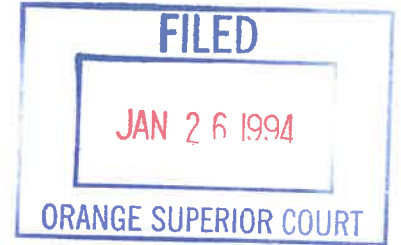
Orange County Superior Court

The Merchants Bank

Docket #S 2-94 Oe C

v.

Stephen E. Brier and  
Roxanne J. C. Brier



Order

Plaintiff requests an order permitting Defendant Stephen E. Brier to be served with the summons and complaint in this action by publication. Plaintiff is a bank with its principal place of business in the State of Vermont. Defendant Stephen E. Brier resides in the State of Oregon. Defendant Roxanne J. C. Brier resides in New Hampshire. Plaintiff seeks to bring a foreclosure action against defendants. On December 2, 1993, pursuant to V.R.C.P. 4(e), Plaintiffs attempted to complete personal service on Stephen E. Brier at his address then known to Plaintiff. Personal service was not completed because Defendant had moved from that address. Defendant left a forwarding address and phone number and Plaintiff has not attempted personal service upon him at that address.

Service by publication pursuant to V.R.C.P. 4(g) is inappropriate in this case. The methods for out-of-state service are the same for service within the state. V.R.C.P. 4(e). Upon complaintant's motion showing that "service cannot with due diligence be made by another prescribed method," a court may order service to be made by publication. V.R.C.P. 4(g). Notice to parties must satisfy Fourteenth Amendment due process, and therefore must be "reasonably certain to inform those affected." Brady v. Brauer, 148 Vt. 40, 44 (1987). Notice by publication is "rooted in the necessity raised by the total inability of other service procedures to be used to provide notice." Brady, at 45. Consequently, publication must be the only method available to inform parties.

No necessity for service by publication exists because Plaintiff has not exhausted all possibilities for personal service. Defendant left a forwarding address, and Plaintiff has this address from the Marion County Sheriff's Department in Oregon. Service by publication is not "reasonably certain to inform those affected" when the party's address is known to the Plaintiff.

Plaintiff's Motion for Service by Publication is DENIED. There is no need for resorting to publication because Plaintiff has Defendant's forwarding address and has not attempted personal service at that address.

Dated at Chelsea this 26th day of January, 1994.

Mary Miles Teachout  
Mary Miles Teachout  
Superior Judge