

STATE OF VERMONT
WASHINGTON COUNTY, SS.

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SUPERIOR COURT
WASHINGTON COUNTY

STATE OF VERMONT, }
DEPARTMENT OF TAXES, }
Plaintiff, }
v. }
FREDERICK M. JANCI, JR., }
Defendant. }

Washington Superior Court
Docket No. 10-1-03 Wncv

Entry Order

In this case, the State, claiming that certain business taxes are overdue and imputable to Defendant Janci, an out of state resident, seeks a default judgment. Defendant, who has never appeared in this case, is a resident of the State of New Hampshire. This motion is denied at this time for lack of sufficient service on Defendant Janci.

Briefly, the State initially attempted service under V.R.C.P. 4(l) (waiver of service). That attempt was unsuccessful, so the State attempted personal service. An affidavit of a deputy sheriff from New Hampshire states that Defendant Janci was served by personal delivery of the summons and complaint upon K. Wm. Clauson, attorney for Defendant Janci, at a location in Hanover, New Hampshire. Attorney Clauson later submitted a letter to the court clerk stating that he represents "Janci Metals Recycling, Inc." and that he accepted service. The letter expresses Attorney Clauson's confusion over how Defendant Janci could possibly be "responsible for the corporation." The letterhead indicates that the address of Attorney Clauson's law office is the same location where the affidavit asserts service occurred. Attorney Clauson has not asserted that he represents Defendant Janci, who has never appeared in this case.

Vermont Rule 4(d)(1) permits substituted service on "an agent authorized by appointment or by law to receive service of process, provided that if the agent is one designated by statute to receive service, such further notice as the statute requires shall be given." Federal Rule 4(e)(2) has the same effect. Wright and Miller clarify the meaning of "appointment" as follows:

The cases dealing with agency by appointment indicate that an actual appointment for the specific purpose of receiving process normally is expected. Accordingly, the mere fact that a person acts as the defendant's agent for some purposes does not necessarily mean that the person has authority to receive the summons and complaint. The federal courts look to the circumstances of the agency relationship that has been established between the defendant and the alleged agent. Thus, a financial agent, secretary, manager of the defendant's business, or even the defendant's attorney probably will not be deemed an agent

appointed to receive process absent a factual basis for believing that an appointment of that type has taken place.

Consistent with this judicial construction of "appoint," the federal courts have held that claims by an agent of having authority to receive process or the fact that an agent actually accepts process is not enough to bind the defendant to the court's jurisdiction; there must be evidence that the defendant intended to confer that authority upon the agent

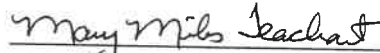
4A Wright and Miller, Federal Practice and Procedure § 1097, at 536-40 (footnotes omitted).

The record in this case suggests that the agent, Attorney Clauson, may be an agent of the corporation. However, no evidence suggests that Attorney Clauson is an agent of Defendant. Moreover, no evidence suggests that Attorney Clauson was appointed specifically to accept process either for the corporation or for Defendant. These circumstances therefore do not suggest sufficient service by agent under Vermont Rule 4(d)(1). New Hampshire statutes and rules do not appear to suggest a different conclusion.

Order

For the foregoing reasons, the State's motion is denied at this time.

Dated at Montpelier, Vermont this 2nd day of May, 2003.



Mary Miles Teachout
Superior Court Judge