

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Tahoe Regional Planning Agency v. Reziapkin

Tahoe Regional Planning Agency · No. No. 2:24-cv-02862-DAD-JDP · Decided April 16, 2025

SUMMARY

The United States District Court for the Eastern District of California denied without prejudice the Tahoe Regional Planning Agency’s motion to serve defendants Danil Reziapkin and Kirill M. Zameyer by publication. The court held that the supporting affidavits did not state facts establishing a cause of action as required by California Code of Civil Procedure section 415.50(a), and that plaintiff had not identified a newspaper or explained why it was most likely to provide actual notice. The court also vacated the previously scheduled hearing.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Dale A. Drozd
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 16, 2025
DOCKET	No. 2:24-cv-02862-DAD-JDP
DISPOSITION	other
PROCEDURAL POSTURE	Plaintiff moved under Federal Rule of Civil Procedure 4 and California law for permission to serve two defendants by publication. The district court denied the motion without prejudice.
STANDARD OF REVIEW	The court evaluated whether plaintiff satisfied the statutory prerequisites for an order permitting service by publication under California Code of Civil Procedure section 415.50.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status unknown

TOPICS

- service of process
- civil procedure
- environmental law

PRACTICE AREAS

- civil procedure
- service of process
- environmental law

QUESTIONS PRESENTED

1. Whether plaintiff satisfied California Code of Civil Procedure section 415.50(a)'s requirement to submit an affidavit stating facts from which the court could conclude that a cause of action existed against the defendants or that they were necessary or proper parties.
2. Whether plaintiff satisfied California Code of Civil Procedure section 415.50(b) by identifying a named newspaper most likely to give actual notice and explaining why that newspaper was appropriate.

HOLDINGS

1. A motion for service by publication must be supported by an affidavit stating facts from which the court can conclude that a cause of action exists against the defendant or that the defendant is a necessary or proper party. Plaintiff's affidavits, which addressed only service efforts, failed to satisfy that requirement.
2. A request for service by publication must identify a named newspaper most likely to give actual notice and explain why that newspaper satisfies the statutory standard. Plaintiff failed to make that showing.

KEY QUOTATIONS

“An application for an order of publication must be accompanied by an affidavit stating facts from which the trial court can draw the conclusion that the plaintiff has a cause of action against the defendant.” (at 4)

“The court shall order the summons to be published in a named newspaper, published in this state, that is most likely to give actual notice to the party to be served.” (at 5)

FACTUAL BACKGROUND

Plaintiff alleged that Reziapkine and Zameyer operated an unauthorized motorized watercraft rental concession on Lake Tahoe in violation of the Tahoe Regional Planning Agency Code. Plaintiff attempted personal service at multiple addresses, consulted a private investigator, contacted counsel from a related action, and emailed the defendants service-waiver materials. Plaintiff's supporting affidavits described these service efforts but did not state facts establishing a cause of action against Reziapkine and Zameyer.

PROCEDURAL HISTORY

Tahoe Regional Planning Agency filed this federal action on October 16, 2024. Plaintiff served two other defendants, obtained an extension of time to serve Danil Reziapkine, Kirill M. Zameyer, and the Oleg N Svanyuta Trust, and then moved to serve Reziapkine and Zameyer by publication after multiple unsuccessful service attempts. The court denied the motion without prejudice because the supporting affidavits did not establish facts showing a cause of action against the defendants and plaintiff did not identify a qualifying newspaper or explain why it was most likely to provide actual notice.

DISPOSITION

other

CASES CITED

- Donel, Inc. v. Badalian, 87 Cal. App. 3d 327, 333 (1978)
- Rios v. Singh, 65 Cal. App. 5th 871, 884 (2021)
- Claimtek, LLC v. Med Off. Grp., Inc., No. 8:22-cv-01696-FWS-DFM, 2023 WL 4155359, at *5 (C.D. Cal. Apr. 7, 2023)
- Rose v. Seamless Fin. Corp. Inc., No. 11-cv-00240-AJB-KSC, 2013 WL 1285515, at *3 (S.D. Cal. Mar. 26, 2013)
- United States ex rel. Quesenberry v. Buena Vista Construction Group, Inc., No. 2:20-cv-01826-DAD-JDP, 2023 WL 6849444, at *1 (E.D. Cal. Oct. 17, 2023)
- Bd. of Trs. of Cement Masons S. California Health & Welfare Fund v. Zupparo, No. 2:23-cv-02900-SB-MAR, 2023 WL 6782308, at *2 (C.D. Cal. Sept. 29, 2023)

OPINION

Tahoe Regional Planning Agency v. Reziapkin

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 TAHOE REGIONAL PLANNING No. 2:24-cv-02862-DAD-JDP

AGENCY,

12 Plaintiff,

13 ORDER DENYING PLAINTIFF'S REQUEST

v. TO SERVE DEFENDANTS BY

14 PUBLICATION

DANIL REZIAPKINE, et al., 15 (Doc. No. 17) Defendants. 16 17 18 This matter is before the court on plaintiff's motion to serve defendants Danil Reziapkin 19 and Kirill M. Zameyer by publication. (Doc. No. 17.) Having reviewed plaintiff's submission, 20 the court deems the motion suitable for decision without oral argument pursuant to Local Rule 21 230(g), and the hearing previously set for April 21, 2025 is hereby vacated. For the reasons 22 explained below, plaintiff's request to serve by publication will be denied.

23 BACKGROUND

24 On October 16, 2024, plaintiff filed a complaint against defendants Reziapkin, Zameyer, 25 Oleg N Svanyuta Trust, and FAUPS, LLC. (Doc. No. 1.) Plaintiff alleges that defendants 26 Reziapkin and Zameyer continue to operate an unpermitted motorized watercraft rental 27 concession in the waters of Lake Tahoe without authorization in violation of Tahoe Regional 28 Planning Agency ("TRPA") Code § 84.10.2. (Id. at ¶ 26.) Plaintiff further alleges that 1 defendants Oleg N Svanyuta Trust and FAUPS, LLC either participated in or allowed the 2 unauthorized rental concession to be operated from their residential properties during the 2024 3 boating season. (Id. at ¶ 27.) 4 On November 19, 2024, the summons was returned executed on defendant FAUPS,

LLC. 5 (Doc. No. 7.) On January 3, 2025, defendant FAUPS, LLC filed an answer and crossclaim 6 against defendant and cross-defendant Reziapkine. (Doc. No. 9.) On January 10, 2025, plaintiff 7 moved for a 60-day extension of time to serve defendants Reziapkine, Zameyer, and Oleg N 8 Svanyuta Trust. (Doc. No. 10.) On January 13, 2025, the court granted plaintiff's motion. (Doc. 9 No. 11.) On January 29, 2025, the summons was returned executed on defendant Oleg N 10 Svanyuta Trust. (Doc. No. 16.) 11 Plaintiff provided evidence that it engaged in the following efforts to personally serve 12 defendants Reziapkine and Zameyer. Plaintiff attempted personal service on the location where 13 defendants Reziapkine and Zameyer resided during the 2024 summer boating season, but it 14 appeared under construction and as if no one lived there. (Doc. No. 17-2 at 2.) A co-defendant 15 provided another address for defendants Reziapkine and Zameyer that the co-defendant 16 purportedly obtained during the landlord-tenant relationship, and plaintiff attempted personal 17 service there 10 times, but no one was willing to answer the door. (Id. at 4.) Boater registration 18 indicated defendant Zameyer might reside at a location in Oregon, but the property owner "Olga 19 Zameyer" said defendant Zameyer hadn't lived there in some time. (Id. at 2.) Plaintiff hired a 20 private investigator who produced six addresses for defendant Zameyer and 20 for defendant 21 Reziapkine. (Id. at 3.) The private investigator identified the Oregon and co-defendant-provided 22 addresses as the current addresses of defendants Zameyer and Reziapkine respectively. (Id.) 23 Plaintiff also attempted to reach out to defendant Reziapkine's counsel in a related action, but 24 counsel said he was not attorney of record in this case and that "we were terminating [sic] quite a 25 while ago." (Id.) Finally, plaintiff attempted to email defendants with a waiver of service 26 package using their business email. (Id. at 4.) 27 On March 13, 2025, plaintiff filed a motion to serve defendants Reziapkine and Zameyer 28 by publication. (Doc. No. 17.) No opposition to the motion has been filed.

1 LEGAL STANDARD

2 Under the Federal Rules of Civil Procedure, an individual can be served by any of the 3 following: 4 (A) delivering a copy of the summons and of the complaint to the individual personally; (B) leaving a copy of each at the individual's 5 dwelling or usual place of abode with someone of suitable age and discretion who resides there; or (C) delivering a copy of each to an 6 agent authorized by appointment or by law to receive service of process. 7 8 Fed. R. Civ. P. 4(e) (2). Rule 4 also provides that proper service can be made by "following state 9 law for serving a summons in an action brought in courts of general jurisdiction in the state where 10 the district court is located or where service is made[.]" Fed. R. Civ. P. 4(e)(1). 11 California law permits service by publication. In this regard, California Code of Civil 12 Procedure § 415.50(a) provides, in relevant part: 13 A summons may be served by publication if upon affidavit it appears to the satisfaction of the court in which the action is pending that the 14 party to be served cannot with reasonable diligence be served in another manner specified in this article and that . . . [a] cause of 15 action exists against the party upon whom service is to be made or he or she is a necessary or proper party to the action. 16 17 "Reasonable diligence" for purposes of § 415.50(a) means the

plaintiff “took those steps which a 18 reasonable person who truly desired to give notice would have taken under the circumstances.” 19 *Donel, Inc. v. Badalian*, 87 Cal. App. 3d 327, 333 (1978). Only when reasonable diligence is 20 shown, 21 [t]he court shall order the summons to be published in a named newspaper, published in this state, that is most likely to give actual 22 notice to the party to be served. If the party to be served resides or is located out of this state, the court may also order the summons to 23 be published in a named newspaper outside this state that is most likely to give actual notice to that party. The order shall direct that a 24 copy of the summons, the complaint, and the order for publication be forthwith mailed to the party if his or her address is ascertained 25 before expiration of the time prescribed for publication of the summons. 26 27 Cal. Code. Civ. Proc. § 415.50(b). Upon publication of notice once a week for four consecutive 28 weeks, service is deemed complete. Cal. Gov’t Code § 6064. “Four publications in a newspaper 1 regularly published once a week or oftener, with at least five days intervening between the 2 respective publication dates not counting such publication dates, are sufficient.” *Id.*

3 ANALYSIS

4 As stated previously, California Code of Civil Procedure § 415.50(a) allows for service by 5 publication only “if upon affidavit it appears to the satisfaction of the court in which the action is 6 pending that . . . [a] cause of action exists against the party upon whom service is to be made or 7 he or she is a necessary or proper party to the action.” Cal. Civ. Proc. Code § 415.50(a). “An 8 application for an order of publication must be accompanied by an affidavit stating facts from 9 which the trial court can draw the conclusion that the plaintiff has a cause of action against the 10 defendant.”¹ *Rios v. Singh*, 65 Cal. App. 5th 871, 884 (2021). “This is a jurisdictional 11 prerequisite to the issuance of an order of publication.” *Id.* 12 Here, plaintiff provided two affidavits in support of the pending motion. (Doc. Nos. 17-2, 13 17-6.) These affidavits refer to efforts to serve defendants Reziapkine and Zameyer. (*Id.*) They 14 do not state any facts from which the trial court can draw the conclusion that plaintiff has a cause 15 of action against defendants Reziapkine and Zameyer. (*Id.*) On this basis alone the court must 16 deny service by publication. *Rios*, 65 Cal. App. 5th at 884; see also *Claimtek, LLC v. Med Off. 17 Grp., Inc.*, No. 8:22-cv-01696-FWS-DFM, 2023 WL 4155359, at *5 (C.D. Cal. Apr. 7, 2023) 18 (“Under Section 415.50(a)(1), a plaintiff must offer independent evidentiary support, in the form 19 of a sworn statement of facts, for the existence of a cause of action against the defendant.”) 20 (citation omitted); *Rose v. Seamless Fin. Corp. Inc.*, No. 11-cv-00240-AJB-KSC, 2013 WL 21 1285515, at *3 (S.D. Cal. Mar. 26, 2013) (“Accordingly, the Court finds the Dickenson 22 Declaration, the Perlstein Declaration, and the ex parte application devoid of any facts from 23 which the trial court could draw the conclusion that a cause of action existed against any of the 24 defendants.”) (citation omitted, cleaned up). 25 // 26 1 The undersigned acknowledges that district courts have at times overlooked this requirement 27 imposed by California law. See, e.g., *United States ex rel. Quesenberry v. Buena Vista Construction Group, Inc.*, No. 2:20-cv-01826-DAD-JDP, 2023 WL 6849444, at *1 (E.D. Cal.,

28 Oct. 17, 2023).

1 Additionally, although plaintiff has identified South Lake Tahoe, California as the place 2 |
where service should be effected by publication, plaintiff has not provided the court with a named
3 || newspaper or an explanation for why that newspaper is most likely to give actual notice. Cal. 4
| Civ. Proc. Code § 415.50(b) (“The court shall order the summons to be published in a named 5 ||
newspaper, published in this state, that is most likely to give actual notice to the party to be 6 |
served.”); see also Bd. of Trs. of Cement Masons S. California Health & Welfare Fund v. 7 |
Zupparo, No. 2:23-cv-02900-SB-MAR, 2023 WL 6782308, at *2 (C.D. Cal. Sept. 29, 2023) 8 |
 (“Although Plaintiffs provide a named newspaper in California, they fail to do so in Florida. Nor 9
| do they adequately explain why the named newspaper selected, the Los Angeles Daily Journal, is
10 || the newspaper most likely to give actual notice.”).”

11 CONCLUSION

12 For the reasons explained above, 13 1. The hearing date previously set for April 21, 2025 is
VACATED; and 14 2. Plaintiff's motion to serve defendants Reziapkin and Zameyer by
publication 15 (Doc. No. 17) is DENIED without prejudice to refiling. 16 IT IS SO ORDERED.
Dated: _ April 15, 2025 Dae A. 2, eyel

18 DALE A. DROZD

19 UNITED STATES DISTRICT JUDGE

20 21 22 23 24 25 6 | a The court identifies no other deficiencies with plaintiff's motion. The court
is satisfied for 27 | purposes of reasonable diligence that, based on the evidence submitted (Doc.
No. 17-2), plaintiff “took those steps which a reasonable person who truly desired to give notice
would have taken 28 | under the circumstances.” Donel, Inc., 87 Cal. App. 3d at 333.