

DISTRICT COURT OF APPEAL OF FLORIDA, THIRD DISTRICT

Grupo Radio Centro S.A.B. de C.V. v. American Merchant Banking Group, Inc. and Spanish Radio Productions, Inc.

71 So. 3d 151 (Fla. 3d DCA 2011) · No. No. 3D10-3237 · Decided August 31, 2011

SUMMARY

The Florida Third District Court of Appeal held that service of process on a Mexican defendant was improper because the alias summons did not specify whether the response period was measured in business days or calendar days, as required for service under the Hague Convention. The court reversed the denial of the motion to quash service and the dismissal of the complaint, and remanded for proper service.

CASE DETAILS

COURT	District Court of Appeal of Florida, Third District
WRITING FOR THE COURT	Ramirez; Cortinas; Salter
JURISDICTION	Florida
DECIDED	August 31, 2011
DOCKET	No. 3D10-3237
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from the denial of a motion to quash service of process and dismissal of an amended complaint.
PRECEDENTIAL VALUE	Published opinion
PARTIES	Grupo Radio Centro S.A.B. de C.V. v. American Merchant Banking Group, Inc., Spanish Radio Productions, Inc.

TOPICS

[service of process](#)[foreign affairs](#)[commercial litigation](#)[civil procedure](#)[appellate procedure](#)

PRACTICE AREAS

[Civil procedure](#)[International service of process](#)[Commercial litigation](#)

QUESTIONS PRESENTED

1. Whether service of process on Grupo Radio Centro in Mexico complied with the Hague Convention.

2. Whether the trial court properly denied the motion to quash service and dismissed the amended complaint after the defective service.

HOLDINGS

1. Service was improper because the alias summons failed to state whether Grupo Radio Centro's response time was calculated in business days or calendar days, a specification required for proper service under the Hague Convention in Mexico.

KEY QUOTATIONS

"The Hague Convention is a multilateral treaty that was formulated in 1964 ... to provide a simpler way to serve process abroad, to assure that the defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad." (151)

"pre-empts inconsistent methods of service prescribed by state law." (151)

"is mandatory in all cases to which it applies." (151)

FACTUAL BACKGROUND

American Merchant Banking Group, Inc. filed suit in February 2010 against Grupo Radio Centro and its subsidiary, Grupo Radio L.A., seeking compensation for alleged consulting services under an oral contract. American initially served only Grupo Radio L.A., believing it was an agent of Grupo Radio, but lacked evidence that Grupo Radio exercised exclusive control over the subsidiary. American then attempted service on Grupo Radio in Mexico under the Hague Convention using an alias summons that did not specify whether the response period was measured in business days or calendar days.

PROCEDURAL HISTORY

American Merchant Banking Group, Inc. sued Grupo Radio Centro and its subsidiary, Grupo Radio L.A., for compensation allegedly due under an oral consulting-services contract. After unsuccessful service efforts, American served Grupo Radio in Mexico under the Hague Convention using an alias summons. The trial court denied Grupo Radio's motion to quash service and dismissed the amended complaint; the Third District reversed and remanded for proper service.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Reverse the denial of the motion to quash and the dismissal of the complaint, and remand for proper service. The court noted that the alias summons could be amended by adding the missing word specifying the applicable response-time calculation.

CASES CITED

- Volkswagenwerk AG v. Schlunk, 486 U.S. 694, 698-99, 705, 108 S. Ct. 2104, 100 L. Ed. 2d 722 (1988)
- Chabert v. Bacquie, 694 So. 2d 805, 812 (Fla. 4th DCA 1997)

OPINION

Grupo Radio Centro S.A.B. De C v. v. American Merchant Banking Group, Inc.

71 So. 3d 151

PER CURIAM.

71 So.3d 151 (2011) GRUPO RADIO CENTRO S.A.B. DE C.V., etc., Appellant, v. AMERICAN MERCHANT BANKING GROUP, INC. and Spanish Radio Productions, Inc., Appellees. No. 3D10-3237. District Court of Appeal of Florida, Third District. August 31, 2011. Rehearing Denied October 4, 2011. Legon Ponce & Fodiman, and Todd Legon and William F. Rhodes, Miami, for appellant. Richard J. Burton and Peter J. Solnick, Miami, for appellees. Before RAMIREZ, CORTINAS, and SALTER, JJ. PER CURIAM. Grupo Radio S.A.B. de C.V. appeals the denial of its motion to quash service of process and dismissal of the amended complaint. We reverse and remand because service of process was improper. American Merchant Banking Group Inc. filed suit in February, 2010, against Grupo Radio and its subsidiary, Grupo Radio L.A., seeking compensation for consulting services American allegedly performed pursuant to an oral contract. American originally served only Grupo Radio L.A., believing that Grupo Radio L.A. served as an agent for Grupo Radio. Since American lacked evidence that Grupo Radio exercised exclusive control over Grupo Radio L.A., American lacked evidence of agency. American therefore attempted service on Grupo Radio in Mexico under the Hague Convention, using a foreign process to issue an alias summons. However, the summons was deficient under the requirements of the Hague Convention, to which Mexico is a signatory, because it did not state whether Grupo Radio's required response time was calculated in business days or calendar days. This specification is required for proper service under the Hague Convention in Mexico.[1] "The Hague Convention is a multilateral treaty that was formulated in 1964 ... to provide a simpler way to serve process abroad, to assure that the defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad." Volkswagenwerk AG v. Schlunk, 486 U.S. 694, 698, 108 S.Ct. 2104, 100 L.Ed.2d 722 (1988). The Hague Convention "pre-empts inconsistent methods of service prescribed by state law." Id. at 699, 108 S.Ct. 2104. Moreover, the United States Supreme Court has held that the Hague Convention "is mandatory in all cases to which it applies." Id. at 705, 108 S.Ct. 2104. In Florida, the Hague Convention applies in all cases "where there is occasion to transmit a judicial or extrajudicial document for service abroad." Chabert v. Bacquie, 694 So.2d 805, 812 (Fla. 4th DCA 1997). American thus is subject to the requirements of the Hague Convention, and it may easily amend its alias summons to add the single word which would make the summons proper.

*152 Accordingly, we reverse the trial court's denial of the motion to quash and dismissal of the complaint, and remand the cause for proper service.

Reversed and remanded.

NOTES

[1] See Convention on Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters, 20 U.S.T. 361, T.I.A.S. No. 6638 (Feb. 10, 1969) (the "Hague Convention").

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