

**IN THE COURT OF COMMON PLEAS
DIVISION OF DOMESTIC RELATIONS
BUTLER COUNTY, OHIO**

David L. Swartz
9724 Flagstone Way
West Chester, OH 45069
DOB: 10/20/61
P: 513-317-1448
Plaintiff

v.

Qing Tian
26 Union3 502#
Harbin, Heilongjian, China 150036
DOB: 07/20/66
P: unknown
Defendant.

: Case No.: 2019 07 0569
: APPLICATION FOR
: ORDER FOR SERVICE
: BY PUBLICATION;
: POINTS & AUTHORITIES;
: ORDER FOR SERVICE
: BY PUBLICATION
:
: ~~JUDGE HALCOMB~~

COMES NOW THE PLAINTIFF, DAVID L. SWARTZ, who submits this Application for Order for Service by Publication.

FACTS OF THE CASE

This case is related to a Complaint for Divorce filed in this Court. The Defendant currently resides in China. Plaintiff attempted to serve the Defendant utilizing the provisions of the Hague Service Convention commencing in October 2019, without success.

REQUEST

Plaintiff has been unable to serve the Defendant, Qing Tian ("Defendant") after an exhaustive effort. Plaintiff hereby requests that the Court issue an Order for Service by Publication for a

minimum period of once a week for four (4) consecutive weeks in the online legal notice publication, *Global Legal Notices*®, a website of general circulation in China, which specializes in service by publication and which provides numerous benefits over traditional print newspapers. Their publication policy is to publish the Order, any notices, and all court-issued documents continuously for a period of four (4) consecutive weeks, which exceeds statutory requirements.

ARGUMENT

Plaintiff has attempted unsuccessfully to serve the Defendant utilizing traditional service of process methods, pursuant to the Hague Service Convention. However, Chinese officials have delayed the service of documents which originate outside their jurisdiction due to the COVID-19 virus. Further, it cannot be confirmed, at this time, that the last known address for the Defendant is still valid.

A Declaration of Due Diligence Search is attached as Exhibit "A", showing the situation in China related to service of process.

The only available alternative method of service in China is service by publication. However, traditional newspapers in China do not allow for publication of legal notices due to the lack of a law providing such method. The only known method for service by publication in China is through *Global Legal Notices*® which provides a more thorough method to give actual notice to the Defendant, as described on their legal notice website at www.GlobalLegalNotices.com.

This method allows for a greater opportunity to give actual notice to the Defendant than service by publication in a traditional newspaper. It provides publication of the Court Order, plus the entire set of Court-issued documents. Further, the publication period exceeds the customary once a week for four (4) consecutive weeks by continually publishing the documents for an indefinite period, or as directed by the Court. In addition, a Google search by the Defendant's name and

country will typically appear on page one of the Google search after approximately 5 days, thus, providing a greater opportunity to give actual notice to the Defendant.

POINTS AND AUTHORITIES

The U.S. Supreme Court in *Mullane v. Central Hanover Trust & Bank Co.*, 22 ILL.339, U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950), found that, *"It is a logical step forward in the evolution of civil procedure that the use of new technologies in common communication be utilized."*

U.S. courts have reasoned that service by publication on foreign defendants is permitted under Federal Rules of Civil Procedure 4(F)(3). Rule 4 allows service of process on a foreign individual:

- (1) by internationally agreed upon means of service reasonably calculated to give notice;
- (2) by a reasonably calculated method as prescribed by the country's law for service for general actions or as the foreign authority directs to a letter rogatory; or (3) by other means not prohibited by international agreement. Because the 1993 amendments to FRCP 4(F) urge that FRCP (4)(3) be construed liberally, the courts have interpreted FRCP 4(F)(3) as authorizing them to utilize technological advancements for serving foreign defendants.

Federal Rules of Civil Procedure, Rule 4((3)(1) provides that *"Service of an individual . . . may be effected in any judicial district of the United States pursuant to the law of the state in which the district court is located . . ."*

Further, Ohio Civil Rule 4.4 allows for service by publication upon application to the Court. The challenge facing Plaintiff in this case is there are no traditional newspapers in China that will allow for publication of legal notices which originate in courts in the United States.

CONCLUSION

Global Legal Notices® offers an improved method of providing actual notice to a Defendant of a pending lawsuit while satisfying the Court's requirements for service by publication. It is widely held that service by publication has a limited success rate in providing actual notice to a Defendant that a legal case is pending. Yet, courts routinely issue an Order allowing for service by publication in a newspaper, either print or online, as a last resort method to complete service of process.

Wherefore, Plaintiff respectfully requests that the Court issue an Order for Service by Publication in the instant case.

Respectfully submitted,

Edwin L. Vardiman, Jr., Esq.
Attorney for Plaintiff

708 Walnut St. #600

Cint, Ohio 45202

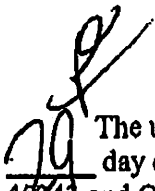
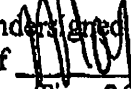
(513) 211-6650, edwin@godbeylaw.com

ORDER FOR SERVICE BY PUBLICATION

IT IS SO ORDERED that the Complaint for Divorce, all supporting Court-issued documents (in English and Mandarin Chinese), and this ORDER shall be published in *Global Legal Notices*, a legal notice publication of general circulation in China, for a period of four (4) consecutive weeks and that Proof of Publication be filed with this Court no later than thirty (30) days after completion of the publication.

Judge, Court of Common Pleas

CERTIFICATE OF SERVICE

 The undersigned hereby certifies that a true and accurate copy of the foregoing was served this day of , 2020 on Matthew C. Sorg, Esq., 2700 Stratacache Tower, Dayton, OH 45243 and Qing Tian, 26 Union3 502#, Harbin City, Heilongjiang, 150036, China via US mail.



Edwin L. Vardiman, Jr. (0070574)
Attorney for Plaintiff

Exhibit "A"

DECLARATION OF DUE DILIGENCE SEARCH

I declare, under penalty of perjury of the laws of the State of Ohio, that the following is true and correct to the best of my knowledge and that I could competently testify, if called, to the following:

1. I am the Director of International Service for Process Service Network, LLC, a process server and investigator with extensive experience in international service of process, am over the age of 18 years, and not a party to the within-named action. I have been a Registered Process Server and co-owner of Process Service Network, LLC since 1978. I have co-authored four (4) books on service of process, international investigations and court filing procedures and have conducted training seminars for the past 34 years. I regularly serve, or cause to be served, legal documents domestically and worldwide and supervise all international service and investigation assignments for clients who make assignments to us in China. I can competently testify to the facts stated and declared within.
2. On October 22, 2019, I received an assignment from Godbey Law LLC, attorneys for Defendant in the matter Swartz v. Tian, Case No. 2019 07 0569, along with written instructions to serve, Qing Tian ("Defendant"), in China.

The service was to be completed pursuant to the Hague Service Convention.

3. On October 22, 2019, I forwarded the formal service request to the China Central Authority, the Ministry of Justice, for processing according to the provisions of the treaty. The typical turnaround time for service in China is 3-6 months; it has now been in excess of 6 months. Further, as of April 6, 2020, China has suspended service of all Hague requests due to the COVID-19 virus. There is no known date when service of process will resume in China but Embassy officials advise that it will be several months, at the earliest.

4. SUMMARY: Based upon all available information, I am unable to serve the Defendant due to the COVID-19 virus and travel restrictions in China.

5. RECOMMENDATION: Service by Publication. However, print newspapers in China will not accept requests for service by publication. The only known alternative is publication in Global Legal Notices LLC which provides numerous advantages over traditional print newspapers in providing actual notice to a party. This method will not affect the formal Hague service at such time as China resumes service of process.

Executed on this 18th day of May 2020, at Chatsworth, CA,
attesting the foregoing to be true and correct, under penalty of
perjury of the laws of the State of Ohio.



Art Howard

California All-Purpose Acknowledgment

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California

89.

County of Los Angeles

On May 18, 2020, before me, Nelson Tucker, Notary Public, personally appeared Art Howard, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and Official Seal.



Nelson Tucker, Notary Public
My Commission Expires January 23, 2021

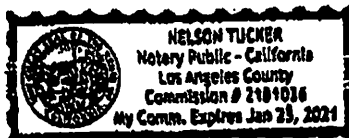


Exhibit "B"

Comparison Chart**International Service by Publication**

| Features | Global Legal Notices | Traditional Newspapers |
|-------------------------------------|-----------------------------|-------------------------------|
| Publish court Notice of Publication | Yes | Yes |
| Open access to public | Yes | Yes |
| Publish actual court documents | Yes | No |
| Search engine friendly | Yes | No |
| Extended publication period | Yes | No |
| Available in all countries | Yes | No |
| Translation in multiple languages | Yes | No |
| Email notification | Yes | No |
| Unlimited size of notice | Yes | No |
| Exceeds minimum requirements | Yes | No |
| Search by name or case number | Yes | No |
| Available on computer and cell | Yes | No |
| Cost efficient | Yes | No |