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Legal ALERT!

Service of Process Abroad

On a certified question in *Morgenthau v. Avion Resources Ltd.*, the New York Court of Appeals clarified Section 313 of the New York Civil Practice Law and Rules (“CPLR”), which governs service of process outside New York state. CPLR 313 states:

A person domiciled in the state or subject to the jurisdiction of the courts of the state under section 301 or 302, or his executor or administrator, may be served with the summons without the state, in the same manner as service is made within the state, by any person authorized to make service within the state who is a resident of the state or by any person authorized to make service by the laws of the state, territory, possession or country in which service is made or by any duly qualified attorney, solicitor, barrister, or equivalent in such jurisdiction.

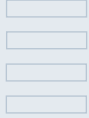
In *Morgenthau*, the district attorney served numerous parties in Brazil via various means, including methods set forth in CPLR 308 and 311, to pursue a civil forfeiture action. The defendants argued that service was improper because it offended notions of international comity and requirements of international treaties and Brazilian law that service in Brazil be made exclusively via letters rogatory, pointing to the Inter-American Convention on Letters Rogatory, which Brazil and the United States are signatories.

New York’s Highest Court held that as long as a basis for extraterritorial jurisdiction exists, CPLR 313 allows for all methods of service on individuals or corporations in foreign states that are available for service inside New York, regardless of the methods the foreign state may use, including all of the substitute service methods available under the several paragraphs of CPLR 308 and 311(b). The Court of Appeals also found that principles of international comity did not compel a different result. Although the existence of a treaty typically requires deference to the law of the foreign state as to the method of service, here the Court of Appeals found that the Inter-American Convention on Letters Rogatory did not make letters rogatory exclusive, thus New York State methods of service remained as viable options.

The Court looked to the “unambiguous language of the statute”, both as it relates to what the statute requires as well as what it does not require, stating that the words of CPLR 313 were “clear and unqualified: service may be made without the State . . .

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in the same manner as service is made within the state.” Citing the legislative intent behind CPLR 313, the Court of Appeals reasoned that this “straightforward rule” advanced the statute’s purpose of enhancing the possibility of acquiring personal jurisdiction over non-residents subject to the jurisdiction of New York courts. CPLR 313 intended to “remove state lines” and allow service methodologies authorized by the CPLR to be used “wherever the defendant may be found.” ■

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