

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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VISHRANTHAMMA SWARNA,

Plaintiff,

06 Civ. 4880 (PKC)

-against-

MEMORANDUM  
AND ORDER

BADAR AL-AWADI,  
HALAL MUHAMMAD AL-SHAITAN and STATE OF  
KUWAIT,

Defendants.

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P. KEVIN CASTEL, U.S.D.J.

Plaintiff Vishranthamma Swarna alleges that she is an Indian citizen who has been subjected to slavery and slavery-like practices, including involuntary servitude and torture, at the hands of the her employers, Badar Al-Awadi, a Kuwaiti diplomat previously stationed at the Kuwait Permanent Mission to the U.N. in New York, and his wife, Halal Muhammad Al-Shaitan. According to plaintiff, Al-Awadi is presently assigned as a diplomat to the Embassy of Kuwait in France and lives in Paris in a private residence with his wife. Plaintiff seeks to have this Court direct a means of service of process on Al-Awadi and Al-Shaitan, who are named as defendants. The State of Kuwait is also a defendant in this action but service on it is presently not at issue on this motion.

Plaintiff wrote to this Court last November seeking a conference to consider an order authorizing alternative service of process on Al-Awadi and Al-Shaitan. I instructed plaintiff to proceed by formal motion, serving the motion on the Office of Legal Advisor, United States Department of State, and the United States Attorney. (Doc No. 9) At a conference held before the Court on February 7, 2007, at which the government appeared and was

heard, I directed that plaintiff first attempt service under the Hague Service Convention, indicating that if that proved unsuccessful then she would be permitted to renew her motion. (Doc No. 12)<sup>1</sup>

In response to an attempt to serve the individual defendants via the Hague Service Convention, French authorities have declined because of the individuals' diplomatic immunity. Accordingly, plaintiff now renews her motion for an order permitting an alternate means of service upon the two individuals under Rule 4(f)(3), Fed. R. Civ. P.

Rule 4(f)(3) provides that service "may be effected in a place not within any judicial district of the United States . . . by . . . means not prohibited by international agreement as may be directed by the court." This plaintiff has exhausted the possibility of service under subdivision 1 of Rule 4(f) by attempting service under the only international agreement arguably permitting service, the Hague Service Convention. The 1993 Notes acknowledge that service by a court authorized means under Rule 4(f)(3) is permitted where a signatory state is "dilatatory or refuse[s] to cooperate for substantive reasons." See RSM Production Corp. v. Fridman, 2007 WL 2295907 (S.D.N.Y. Aug. 10, 2007) Here, a signatory state, France, has refused to act because of a substantive reason, *i.e.* diplomatic immunity.

There is nothing in the text of the rule which contains a hierarchy of service methods as between Rule 4(f)(2) and Rule 4(f)(3). See Ryan v. Brunswick Corp., 2002 WL 1628933, \*2 (W.D.N.Y. May 31, 2002) ("subsection (f)(3) is an independent basis for service of process and is neither 'extraordinary relief' nor a 'last resort' to be used only when parties are unable to effectuate service under subsections (f)(1) or (f)(2).")

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<sup>1</sup> Rule 4(f)(1) authorizes service under the Hague Service Convention or other treaty. "Use of the [Hague Service] Convention procedures, when available, is mandatory if documents must be transmitted abroad to effect service." Advisory Committee Notes to 1993 amendments to Rule 4(f) (the "1993 Notes") (citing Volkswagenwerk Aktiengesellschaft v. Schlunk, 486 U.S. 694 (1988)).

Plaintiff proposes that the Court permit service upon the two individuals by delivery of the summons and complaint via private international courier service to their Paris residence and by Federal Express delivery of same to their lawyer in New York. Plaintiff's also seek to serve Al-Awadi and Al-Shaitan via international courier addressed to Al-Awadi at his present place of employment, the Embassy of Kuwait in Paris, and by delivery to the Permanent Mission in New York with a request that the materials be forwarded to Al-Awadi and Al-Shaitan.

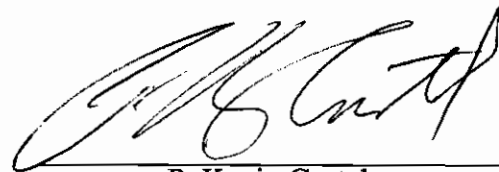
The United States objects to the foregoing methods of service, except it takes no position on service upon the individuals' U.S. lawyer. It would not object to service by certified mail, return receipt, transmitted by the Clerk of Court to the residence of the two individual defendants, a method expressly mentioned in Rule 4(f)(2). I discern no legal objection from non-party United States to service by private courier service, only that it notes the absence of an objection by France to a Clerk's mailing. The United States objects to any use of the Embassy or Mission as forwarding agents because it "would raise significant issues relating to compliance with applicable international agreements." (Letter of Feb. 1, 2007 at 3)

I will permit plaintiff's counsel to cause service of the summons and complaint by international courier to the residence in Paris, provided it is a courier service that maintains written or electronic records of delivery, and, additionally, by U.S. mail to the same residence, postage prepaid. I will not require that the U.S. mailings include return receipts because they would entail the involvement of a foreign postal service and may raise needless and difficult issues of the authenticity of the receipts. Mailing by any person authorized under New York law to serve process will suffice. CPLR 313 and 2103(a). I also

will allow service upon the defendants' U.S. lawyer, located in Brooklyn. See RSM Production Corp. v. Fridman, 2007 WL 1515068 (S.D.N.Y. May 24, 2007) (permitting service upon U.S. counsel); 2007 WL 2295907 (S.D.N.Y. Aug. 10, 2007) (adhering upon reconsideration). I will not permit service via a forwarding request directed to the Embassy in Paris or the Mission in New York because it is unnecessary in order to give fair notice to plaintiffs; this eliminates the need to resolve whether such a procedure would violate international agreements to which the United States is a party. The methods of service which I will allow provide "notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Luessenhop v. Clinton County, 466 F.3d 259, 269 (2d Cir.2006) (citing Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)).

A separate order will issue.

SO ORDERED.



P. Kevin Castel  
United States District Judge

Dated: New York, New York  
September 20, 2007