

Personal Service to a UPS Store Proper for Unrepresented Parties

Service of process is one of the technical aspects of litigation that is too often overlooked. Issues of proper service most frequently arise at the outset of a lawsuit when the initial summons and complaint has to be served on a defendant. Television shows and movies occasionally show the length to which some people go to avoid being served with a lawsuit. Although less common, service issues can also arise when the litigation has progressed beyond the initial stages. A recent case from the Second Appellate District shows that getting the details right can be important in saving time, money and most importantly, who prevails in the lawsuit.

Sweeting v. Murat, (Court of Appeal case number B243034, opinion filed November 13, 2013), involved the question of whether service of summary judgment and motions to compel production of documents were properly served on an unrepresented party at his mailbox in a UPS store. In September 2008, Robert Sweeting sued Susan Murat and her family, alleging that they improperly sold millions of dollars of his personal property.

On February 10, 2012, the Murats filed a motion for summary judgment and in the alternative, for summary adjudication, and personally served the papers at the Huntington Beach address Sweeting listed on a notice of change of address form he had filed with the court. This address happened to be a mailbox at a UPS store. The Murats later filed and personally served motions to compel discovery responses at the same Huntington Beach address. Sweeting opposed the motions but did not do so in the time allowed under the law (Sweeting filed his opposition papers two days before the hearing on the summary judgment motion and the motions to compel).

The trial court refused to entertain the opposition papers because they were not timely filed and ruled that the Murats were entitled to summary adjudication and granted the Murats' motions to compel. Sweeting appealed the ruling, arguing that he was not properly served with the motion papers, and therefore the court erred in granting the motion for summary judgment. California Code of Civil Procedure section 1101(b) provides that a party can be served at their residence between the hours of 8 a.m. and 6 p.m. Sweeney argued that service was improper because the UPS Store was not his residence.

The Court of Appeal for the Second Appellate District disagreed. The court tacitly acknowledged that the UPS store is not a residence under Section 1011(b), but nonetheless concluded that service at the UPS store was valid. The court interpreted Section 1011(b) as creating a hierarchy of methods in which personal service on a party can be completed with the manner of service agreed to in a given case taking precedence.

Here, Sweeting listed the address of the UPS Store on a notice of change of address he filed with the court. Under the rule articulated by the court, that took precedence. Sweeting contended that he had agreed with the other parties involved in the litigation that service could be made on his son at his La Palma home, but none of this was put on the record, no orders were made to effect such a change of method of service and Sweeting did not file a new notice of change of address. Sweeting didn't do himself any favors either by missing the deadline for filing his opposition to the summary judgment motion, but the court's decision suggests that had he clearly articulated on the record his preferred method of service, his appeal may have been successful.

It might seem odd that the results of a multimillion-dollar dispute turned on seemingly minor details as these, but that is the nature of civil procedure generally and service of process rules in particular. Service of process involves lots of nuances. As a further example, the court of appeal noted that Code of Civil Procedure Section 415.20 prohibits service of a complaint and summons on a USPS post office box, but that prohibition doesn't apply to private or commercial post office boxes.

One of the primary takeaways from Sweeting is counsel and their clients need to be vigilant about making sure that any address changes get communicated to the court. Moreover, it is important to check the court's website for new filings in cases you are handling because courts often don't update their systems promptly and notices and filings are sent to the wrong address. This is just one of the many details of which vigilant litigators need to be aware.

If you have any questions or comments, I would be delighted to hear from you.

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