
PARTY ATTEMPTING TO SERVE IN FOREIGN COUNTRY MUST COMPLY WITH THE HAGUE CONVENTION

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Cardona v. Lac Vieux Desert Band of Lake Superior Chippewa Indians Holdings Mexico, LLC
Ariz. Supreme Court, July 30, 2010

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The Lac Vieux Desert Band of Lake Superior Chippewa Indians (the "Tribe") sued Cardona and five others. The lawsuit concerned the Tribe's investment in a casino project in Guadalupe, Mexico. Suit was filed in Maricopa County Superior Court. Defendants were located in Mexico. The Tribe received approval from the trial court to serve Defendants by a "cobbling together" of the following actions: 1) certified mail to the Defendants' attorneys of record; 2) email to Mr. Cardona at two addresses; 3) Federal Express delivery to Defendants' last known address in Mexico; and 4) mail to Mr. Cardona at this last known domestic address. The Tribe complied with the order but did not receive delivery confirmation at the Mexican address. The Tribe also did not receive a return receipt for the mailings sent domestically to Cardona, but the trial court nevertheless deemed service by these mailings to be complete. Defendants moved to dismiss for insufficiency of service of process. The trial court denied the motion.

The Supreme Court reversed. Service of process in a foreign county is governed by Rule 4.2, Ariz.R.Civ.P. and the Hague Service Convention. Mexico acceded to the Hague Convention in 1999, but expressly refused to adopt the Convention's alternative means of service "through postal channels or personal service through judicial officers or other persons of the state of designation." The exclusive means of service in Mexico is through its Ministry of Foreign Affairs. The Tribe did not serve any Defendant through this channel. Thus, service on these Defendants was invalid.

The Convention does not apply "where the address of the person to be served with the document is not known." The Tribe argued that the Convention did not apply here because Defendants' addresses were unknown. It also argued that regardless of any issues as to service in Mexico, they validly served Defendants' attorneys domestically. The Court refused to address these arguments, since they could be addressed by the trial court upon remand.