

Patent Owner LONGi, Ex. 2005, p. 1
JinkoSolar Co., Ltd. v. LONGi Green Energy Technology Co., Ltd.
IPR2025-00859

of Civil Procedure 12(b)(5). *See Murphy Bros. v. Michetti Pipe Stringing*, 526 U.S. 344, 350 (1999). In order to avoid dismissal, the plaintiff must make a *prima facie* showing of proper service. *Carimi v. Royal Carribean Cruise Line, Inc.*, 959 F.2d 1344, 1346 (5th Cir. 1992).

III. ANALYSIS

The parties disagree regarding which law should apply to determine whether Plaintiff's method of service is proper. Defendants argue that Texas law should apply because this Court—the forum court—sits in Texas. Dkt. No. 25 at 8. Plaintiff argues that California law should apply because the plain language of Federal Rule of Civil Procedure 4(e)(1) authorizes service according to the laws of “the state . . . where service is made.” Fed. R. Civ. P. 4(e)(1). For the reasons stated below, the Court finds that the Federal Rules permit service pursuant to California law, that California law authorizes service upon a general manager, and that Plaintiff has made a *prima facie* showing of proper service on Defendants via their general manager.

A. The Federal Rules of Civil Procedure Authorize California Law to Apply to Service in this Case

Defendants argue that the law of state in which the forum court sits—here Texas—must apply where a plaintiff is attempting involuntary service on a foreign defendant residing in a country that is a signatory to the Hague Convention. Dkt. No. 25 at 8-10 (citing *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 706-07 (1988); *IDS Prop. Cas. Ins. Co. v. Gree USA, Inc.*, 2018 WL 6605896, at *2 (D. Minn. Dec. 17, 2018)). In support of this, they cite to the Fifth Circuit's *Sheets* decision, asserting that the court there “appears to agree that courts must apply the laws of the U.S. state in which a lawsuit is pending to determine whether service requirements implicate the Hague Service Convention.” *Sheets v. Yamaha Motors Corp., U.S.A.*, 891 F.2d 533 (5th Cir. 1990).

The Court is unpersuaded and has addressed this precise issue previously. *See generally Arigna Tech. Ltd. v. Bayerische Motoren Werke AG*, No. 2:21-cv-00172, Dkt. No. 168 (E.D. Tex.

Jan. 20, 2022). Regarding *Schlunk*, we have said that its references to “forum state” are properly read in the context of the Hague Convention which defines its signatory *countries* as “states.” *Schlunk*, 486 U.S. at 698–99, 705 (citing 20 U.S.T. 362, T.I.A.S. 6638). Accordingly, so long as the internal law of the United States authorizes “substituted service that provides ‘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,’” such service is proper and does not implicate the Hague Convention. *Id.* at 705; *see also Nationwide*, 2019 WL 1244093, at *3.

Further, the plain language of the Federal Rules of Civil Procedure permits service under the law of the place where service takes place—in this case California. *See Rothschild Connected Devices Innovations LLC v. ADS Sec., L.P.*, 2019 U.S. Dist. LEXIS 158361, at *18–19 (E.D. Tex. Aug. 13, 2019) (noting that the Federal Rules allow a plaintiff to execute service pursuant to either the law of the forum or the law of the state where service is made). Service on a foreign corporation, partnership, or association is controlled by Federal Rule of Civil Procedure 4(h). Rule 4(h) contemplates two scenarios: service on a foreign corporation made (1) at a place within a judicial district of the United States or (2) at a place outside the United States. Fed. R. Civ. P. 4(h)(1)–(2). In the former scenario, a “foreign corporation, or a partnership or other unincorporated association . . . must be served . . . in a judicial district of the United States . . . in a manner prescribed by Rule 4(e)(1) for serving an individual.” Fed. R. Civ. P. 4(h)(1)(A).

Rule 4(e)(1), in turn, permits an individual to be “served in a judicial district of the United States by . . . following state law for serving summons in an action brought in courts of general jurisdiction in the state where the district court is located *or where service is made.*” Fed. R. Civ. P. 4(e)(1) (emphasis added).

Defendants' citation to *Sheets* does not change this result. There, the Fifth Circuit was specifically performing a "more thorough analysis" of *Schlunk* in the context of reviewing a motion for sanctions. *Sheets*, 891 F.2d at 536–37. The Fifth Circuit quotes the language "as long as a foreign corporation exercises such control over the domestic subsidiary that the two entities are essentially one, process can be served on a foreign corporation by serving its domestic subsidiary" to indicate that such was the standard under the controlling Illinois long-arm statute at interest in *Schlunk*. *Id.* Critically, the Fifth Circuit declined to "delv[e] into whether [state] law permits service of a foreign corporation by serving its domestic subsidiary." *Id.* Instead, *Sheets* notes that the plaintiff never served the domestic subsidiary and instead attempted service by mailing documents directly to the foreign parent company—a situation the Fifth Circuit found squarely within the scope of the Hague Convention and one very different to the situation at issue in this case. *See id.*

Turning to the instant matter: here, service was made on Defendants in California. Dkt. No. 5 at 1; Dkt. No. 6 at 1. The Federal Rules, therefore, authorize service pursuant to California law in this case.

B. LONGi Properly Served Defendants via their General Manager Jinko US Pursuant to California Law

Defendants next argue that, even if California law were to apply, service was still insufficient because the entity that Plaintiff served—Jinko U.S.—(1) is not a "General Manager" under California law, and (2) was not properly served. The Court will take up each argument in turn.

1. Jinko U.S. is a "General Manager" under California Law

California law authorizes service of process on a corporation by delivering a copy of the summons and the complaint to "a general manager" of the corporation. Cal. Code of Civ. Proc. § 416.10(b); Cal. Corp. Code § 2110 (authorizing service in California upon a foreign corporation

via its “general manager in [the] state”). The California Supreme Court has identified a “general manager” for service of process as an agent who (1) is “of sufficient character and rank to make it reasonably certain that defendant would be apprised of the service” and (2) has “given [the defendant] substantially the business advantages that it would have enjoyed if it conducted its business through its own offices or paid agents in the state.” *Cosper v. Smith & Wesson Arms Co.*, 53 Cal. 2d 77, 83–84 (1959) (quotation omitted). “California and federal district courts have relied on the ‘character and rank’ and ‘substantially the business advantages’ language from *Cosper* in more than a dozen cases since *Cosper* was decided in 1959.” *Falco v. Nissan N. Am. Inc.*, 987 F. Supp. 2d. 1071, 1074 (C.D. Cal. 2013); *see also Yamaha Motor Co. v. Super. Ct.*, 174 Cal. App. 4th 264, 274–75 (2009); *Khachatryan v. Toyota Motor Sales, U.S.A., Inc.*, 578 F. Supp. 2d 1224, 1227 (C.D. Cal. 2008); *Gray v. Mazda Motor of Am., Inc.*, 560 F. Supp. 2d 928, 931 (C.D. Cal. 2008); *Xun v. Daimler AG*, 2020 WL 6784526, at *1 (C.D. Cal. Sept. 3, 2020).¹ Further, the bar for what qualifies as a general manager is “*exceedingly low*.” *K-fee Sys. GmbH v. Nespresso USA, Inc.*, No. CV 22-525-GW-AGRX, 2022 WL 18278402, at *7 (C.D. Cal. July 13, 2022) (emphasis in original) (internal citation omitted).

First, the Court finds that Jinko U.S. is “of a sufficient character and rank to make it reasonably certain that [Defendants] would be apprised of the service” to satisfy the first factor under California law. *Cosper*, 53 Cal. 2d at 83. Jinko U.S. is an affiliate of each of the defendants (compared to the much looser independent contractor relationship present in *Cosper*) and acts as Jinko’s U.S. importation, sales, and service entity. *See* Dkt. No. 18-3 at ¶¶ 7-11, 13-15; Dkt. 18 at

¹ Contrary to Defendants’ arguments that “California courts have not reached a perfect consensus as to when a domestic subsidiary may qualify as a ‘general manager’ of its foreign parent” (Dkt. No. 25 at 3), domestic subsidiaries often meet this criteria under California law, as is the case here, to be a “general manager” and are therefore deemed agents authorized to receive service of process on behalf of their foreign parent. *See also Xun*, 2020 WL 6784526, at *1–2; *Hatami v. Kia Motors Am. Inc.*, 2008 WL 4748233, at *2 (C.D. Cal. Oct. 29, 2008); *iCall, Inc. v. Reliance Comms. Ltd.*, 2010 WL 11583236, at *7 (N.D. Cal. Sept. 16, 2020).

¶¶ 5, 8–11, 13–15; Dkt. 18-1 at ¶¶ 5, 11–14, 18; Dkt. 18-2 at ¶¶ 5, 11–14, 16, 18, 21; Dkt. 22-1 at ¶¶ 10–12 (collectively “the Declarations”). Further, Xiande Li is CEO of Jinko U.S. and is either a board member or senior executive of many of the other entities. *Id.* Finally, as clearly evidenced by the Defendants’ requests for extensions of the time to answer and the filing of the present Motion, service upon them via Jinko U.S. pursuant to California law provided the Defendants with “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.” *Schlunk*, 486 U.S. at 707.

Under the second factor, the Court finds that Jinko U.S. “has given [the Defendants] substantially the business advantages that [they] would have enjoyed if [they] conducted [their] business through [their] own offices or paid agents in the state.” *Cosper*, 53 Cal. 2d at 84; *see also Continental Auto. Sys., Inc. v. Avanci*, LLC, No. 3:19-cv-02933-M, Dkt. 301 at 3–5 (N.D. Tex. July 5, 2020). As discussed above, Jinko U.S. is the company’s U.S. importation, sales, and service entity. As such, Jinko U.S.’s operations are directed to distribution of solar modules designed and manufactured by Jinko Solar Co., Ltd., Jinkosolar (Vietnam) Industries Co. Ltd., and Jinko Solar Technology Sdn. Bhd.—all of whom are under Jinkosolar Holding Co., Ltd.’s umbrella. *See* the Declarations. Therefore, Defendants enjoy the benefits of Jinko U.S.’s undertakings as if they were conducting business through their own offices in California. Accordingly, the Court finds that Jinko U.S. provides a “continuous flow of business into the United States” for the benefit of Defendants such that the second *Cosper* prong is satisfied. *Halo Elecs., Inc. v. Bel Fuse Inc.*, 2010 WL 2605195, at *2 (N.D. Cal. June 28, 2010).

2. Jinko U.S. Was Sufficiently Served

Defendants next argue that Plaintiff did not actually effectuate service on Jinko U.S. because the summonses were left with Ms. Wu, a receptionist at Jinko U.S., but that such clerical

employees do not suffice under California law. Dkt. No. 25 at 1-2 (citing *Elohim EPF USA, Inc. v. Pondanet, Inc.*, 2019 WL 6448962 (C.D. Cal. July 24, 2019)).

Plaintiff responds arguing that its second service of the summonses on Jinko U.S. cured any defect:

Upon learning of the deficiencies alleged in Defendants' Reply, LONGi had its process server re-attempt service on each Defendant via Jinko US. The process server again traveled to Jinko US's place of business. The process server was greeted by a receptionist, Sunnee Lee, and asked for Annie Zhou, Jinko US's authorized agent. Upon being informed Ms. Zhou was absent, the process server asked whether Hui Li, Jinko US's finance controller, was available. Upon learning Mr. Li was also absent, the process server inquired whether any officer, general manager, president or vice president, or treasurer of Jinko US was available. Ms. Lee informed the process server that she was the only person present in the office. After the process server explained the general nature of the documents, Ms. Lee stated she could accept the service and signed for the documents. The process server then also mailed all documents to each Defendant at Jinko US's address, to Ms. Zhou's attention.

Dkt. No. 34 at 9-10 (internal citations omitted).

The Court finds that Plaintiff's second service on Jinko US was sufficient.

Service on a corporation is sufficient when made upon "an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service of process." Fed. R. Civ. P. 4(h). However, in the Ninth Circuit, "service of process is not limited solely to officially designated officers, managing agents, or agent appointed by law for the receipt of process ... [but] can be made upon a representative so integrated with the organization that he will know what to do with the papers." *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988) (internal quotation marks and citation omitted). Generally, service is sufficient when made "upon an individual who stands in such a position as to render it fair, reasonable and just to imply the authority on his part to receive service." *Id.* (internal quotation marks and citation omitted). This determination is dependent on a factual analysis of the employee's authority within the company. *Id.* A "receptionist . . . is merely a clerical employee and thus does not qualify as an

officially designated officer or a managing agent of a corporation.” *Elohim*, No. 819CV00349SVWKES, 2019 WL 6448962, at *5. However, when a process server receives affirmative assurance from a receptionist that the receptionist is the only employee in the office, then service on the receptionist is acceptable provided that a designated officer or managing agent receives actual notice. *See id.* (citing *Direct Mail*, 840 F.2d at 688–89).

Here, this is precisely what transpired. Plaintiff again attempted service by leaving the summonses with the receptionist Ms. Lee after asking whether any of the appropriate officers were present. After the receptionist told the process server that she was the only one there, the server left the documents with her after explaining their general nature. As to actual notice, as discussed above, Defendants received it. *See supra* Section III.B.1.

IV. CONCLUSION

Accordingly, because Plaintiff’s service of process on Defendants was sufficient, the Motion to Dismiss should be **DENIED**.

A party’s failure to file written objections to the findings, conclusions, and recommendations contained in this report within 14 days bars that party from *de novo* review by the District Judge of those findings, conclusions, and recommendations and, except on grounds of plain error, from appellate review of unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Fed. R. Civ. P. 72(b)(2); *see Douglass v. United Servs. Auto. Ass’n*, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*). Any objection to this Report and Recommendation must be filed in ECF under the event “Objection to Report and Recommendations [cv, respoth]” or it may not be considered by the District Judge.

SIGNED this 27th day of April, 2025.


ROY S. PAYNE

8 UNITED STATES MAGISTRATE JUDGE