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## OMNI ARABIANS VS. FAGA

1. The rules applicable to service on a party outside of the Commonwealth permit service of original process by a competent adult through handing a copy of the original process at the residence of the defendant to an adult family member. Upon effectuation of service, the rules require the filing of a return of service by affidavit when the person effectuating service is a person other than the sheriff.

2. Appellate authority teaches that statements in a return of service listing when and where a complaint is delivered constitute matters which are within the personal knowledge of the personal server and are not subject to attack. Matters such as residence to which the process server presumably has no knowledge but learns via third party disclosure do not carry such an insulation.

3. The Pennsylvania Rules of Civil Procedure do not require service at one's "sole" residence. Rather, in the context of the Rules of Civil Procedure, the residence must only be an "actual" residence.

In the Court of Common Pleas of Adams County, Pennsylvania,  
Civil, No. 10-S-1160, OMNI ARABIANS, INC. VS. JENNIFER S.  
FAGA.

Arthur J. Becker, Jr., Esq., for Plaintiff  
Robert L. McQuaide, Esq., for Defendant  
George, J., January 28, 2011

### OPINION

The Defendant, Jennifer S. Faga ("Faga"), has filed a Motion to Strike/Open Judgment claiming that she was never properly served with the pleadings which ultimately resulted in the entry of a default judgment against her. She claims that she does not reside at the address reflected on the Certificate of Service related to initial process. Although acknowledging that her mother resides at the address listed on the Certificate of Service, Faga claims the affidavit identifies as the recipient of the original process a person who does not reside at that address. For the reasons set forth below, Faga's motion is denied.

The litigation in this matter involves the Plaintiff's, Omni Arabians, Inc. ("Omni"), effort to collect fees related to the boarding of approximately 12 Arabian horses owned by Faga. Omni claims that Faga has defaulted on fees for services rendered in an amount of \$75,264.31. On July 13, 2010, Omni initiated suit against Faga by filing a Complaint with the Adams County Prothonotary's Office. On September 15, 2010, an Affidavit of Service was filed indicating that service was effectuated on Faga at 88 Kings Cross, Scarsdale, New York 10583 on September 6, 2010 at 8:46 p.m. The affidavit

indicated that service was rendered by delivering a true copy to “Mary Faga, mother.” The affidavit further indicated service by first class mail at that same address. Finally, the Affidavit of Service included a physical description of Faga’s mother. The affidavit was sworn before a notary public by Aaron Clark, an individual licensed to serve original process in the state of New York.<sup>1</sup>

On September 29, 2010, Notice of Default pursuant to Pennsylvania Rule of Civil Procedure 237.1 was mailed to Faga at the 88 Kings Cross, Scarsdale, New York address. On October 14, 2010, default judgment was entered against Faga in the amount of \$78,339.31. On October 25, 2010, execution was initiated against the animals boarded at Omni’s facility. A sheriff’s sale was scheduled for December 3, 2010. On November 30, 2010, Faga filed the instant motion. Pending hearing, the Court entered an Order staying the sheriff’s sale. An evidentiary hearing was held on December 29, 2010.

It is beyond question that proper service is a prerequisite to the court’s jurisdiction over the person of a defendant. *Anzalone v. Vormack*, 718 A.2d 1246 (Pa. Super. 1998). In determining whether proper service has been made, appellate courts require strict adherence to the rules. *Id.* at 1248. The rules applicable to service on a party outside of the Commonwealth permit service of original process by a competent adult through handing a copy of the original process at the residence of the defendant to an adult family member. Pa. R.C.P. 404 (1). Upon effectuation of service, the rules require the filing of a return of service by affidavit when the person effectuating service is a person other than the sheriff. Pa. R.C.P. 405. When service is effectuated outside of the Commonwealth, the filed affidavit is proof of service. 42 Pa. C.S.A. § 5323(b).

Omni relies upon the Affidavit of Service filed in this matter as proof of service on Faga. The affidavit indicates that it was served by a licensed process server in the state of New York at the residence of Faga. The affidavit further indicates that service was effectuated upon Faga’s mother at the residence. A physical description of Faga’s mother is included with the affidavit.

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<sup>1</sup> The Affidavit of Service filed on September 15, 2010 indicated that the document served was a “Notice to Defend.” A Corrected Affidavit of Service was filed on September 28, 2010 indicating that the document served was a time-stamped copy of the Civil Complaint accompanied by a Notice to Defend.

Faga does not seriously challenge service of the Complaint at the address listed at 88 Kings Cross, Scarsdale, New York. Without denying service of the pleadings on her mother, Faga claims that the Affidavit of Service identifies her mother as Mary Faga when her mother's actual name is Jeanne Anna Faga. Importantly, Faga claims that 88 Kings Cross, Scarsdale, New York is not her residence. As the Rules of Civil Procedure do not permit substituted service at a location other than a residence or place of business, Faga argues that the rules have not been strictly complied with thereby depriving this Court of jurisdiction. I will address each of these claims seriatim.

In considering Faga's claim that the Affidavit of Service incorrectly lists Mary Faga as her mother, it is important to note that she concedes that her mother resides at 88 Kings Cross, Scarsdale, New York. Other than her self-serving claim, she has not produced the testimony of her mother nor any corroborative documentation.<sup>2</sup> Faga claimed at hearing that her mother was unable to attend due to medical reasons. Perhaps recognizing the need for some corroborative evidence, Faga introduced as evidence a 2006 photograph of her mother. The photograph apparently was presented to dispute the process server's description of "Mary Faga's" hair as gray as the photograph revealed that in 2006, her mother's hair was light copper.<sup>3</sup> I find this argument unpersuasive.

In compliance with the Rules of Civil Procedure, the affidavit of service at issue properly sets forth the date, time, place, and manner of service of original process. See Pennsylvania Rule of Civil Procedure 405. Additionally, the affidavit identifies the person served both by name and relationship and includes a physical description of the person served. Coincidentally, that description is remarkably similar to the known physical characteristics of Faga's

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<sup>2</sup> Prior to hearing, Omni had requested Faga's mother to attend and present testimony, however, was unable to compel her appearance through interstate proceedings due to the prompt scheduling of hearing.

<sup>3</sup> In response to the Court's question as to whether a more recent photograph of her mother existed, Faga answered in a negative offering that her mother "didn't like to be photographed." The Court finds it interesting that in preparation for hearing, Faga gathered in excess of 30 items of correspondence and documentation dating as far back as 2004 in support of her claim of residence yet, knowing that her mother would not be attending hearing, was unable to obtain a recent photograph in support of her claim of improper identification.

mother.<sup>4</sup> Accordingly, I discredit Faga's self-serving attempts to refute the affidavit. See *Miller v. Carr*, 292 A.2d 423 (Pa. 1972) (recipient's identification of herself as defendant's mother was within the personal knowledge of the process server and therefore conclusive as to such fact).

Faga's challenge to her alleged residency merits greater discussion. Although appellate authority teaches that statements in a return of service listing when and where a complaint is delivered constitute matters which are within the personal knowledge of the personal server and are not subject to attack, *Anzalone v. Vormack*, 718 A.2d at 1249, matters such as residence to which the process server presumably has no personal knowledge but learns via third party disclosure do not carry such an insulation. *Miller v. Carr*, 292 A.2d 423 (Pa. Super. 1972). In resolving this issue, it is therefore necessary to determine whether 88 Kings Cross, Scarsdale, New York is Faga's residence.

In her testimony, Faga claimed to have moved from her parents' home in Scarsdale when she left home for undergraduate college. After completing her studies, Faga claims to have taken up residency at 307 East Lake Drive, Montauk, New York. She claims to currently reside at the Montauk address approximately nine months of the year spending the other three months at her condominiums in the Florida Keys. In support of her claim, she produced various items of correspondence for the five-year period from 2005 through present. In addition, she presented proof of a real estate license carrying a current address in Montauk. She also produced copies of voter registration information for two years which carried the Montauk address.<sup>5</sup> While these documents confirm that Faga has significant contact with the 307 East Lake Drive, Montauk, New York address, they do not preclude a finding that Faga resides at 88 Kings Cross,

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<sup>4</sup> The affidavit described Faga's mother as a white female with gray hair and an approximate age of 61-70 years old weighing between 100-130 pounds with a height between 5'4" and 5'8". Faga described her mother as being 74 years old weighing approximately 110 pounds and 5'7" tall. The 2006 photograph supports this description and reveals a woman who appears younger than her age.

<sup>5</sup> Other documentation produced by Faga supporting the Montauk address included a W-9 federal tax form; a renewal application from the Arabian Horse Association; and a newspaper article indicating her involvement in fundraising activities in Montauk, New York.

Scarsdale, New York for purposes of service of original process. Rather, compelling evidence at hearing leads to a contrary result.

Credible evidence at hearing established that this litigation involves the boarding of approximately 12 Arabian horses at Omni's property in Adams County. Although Faga claims to have lived at the Montauk address since 1995, the Arabian stallion, which she claims was the cornerstone for her efforts to breed Arabian horses, was registered with the Arabian Horse Association in 1996 by her at the Scarsdale address. In fact, since that time, ten additional Arabian horses had been registered by her through the Arabian Horse Association which recognizes her address on the registrations as 88 Kings Cross, Scarsdale, New York. Since entering into a business relationship with Omni, Faga has consistently listed her billing address with that entity as 88 Kings Cross, Scarsdale, New York. In fact, monthly bills which are regularly forwarded to that address have been paid by Faga until the most recent default. Prior to the commencement of litigation, Omni's counsel forwarded correspondence to Faga at the Scarsdale address in late December, 2009. Faga has acknowledged receipt of that correspondence. Credible testimony of Omni's President, Stephen Dady, indicated that during the course of their business relationship, Omni was told to use 88 Kings Cross, Scarsdale, New York as the billing residence. Additionally, a December 14, 2010 inquiry of the Scarsdale, New York postmaster revealed that the address of 88 Kings Cross, Scarsdale, New York for Jennifer Faga is "good as addressed" noting that no change of address orders have been filed. Faga concedes that she has clothing and personal items at the Scarsdale property.

While this evidence supports a finding of residency in Scarsdale, the most persuasive evidence in support of such a conclusion exists in Faga's testimony concerning her motor vehicle operating privileges. When initially questioned concerning the address on her New York driver's license, Faga indicated that it carried the Montauk address. When this Court requested her to produce her operator's license, she produced a temporary card which indeed carried the Montauk address. Upon further questioning, Faga conceded that her license previously carried the Scarsdale address until two weeks prior to hearing and was changed subsequent to her filing of the Motion to Open/Strike Judgment. Faga attempted to explain the

recent change of address as being related to her renewal of her driving privileges. She further explained that her license had the old address because it had not been renewed for some period of time which she believed to be approximately ten years.

In weighing the credibility of Faga's testimony, this Court takes judicial notice of the laws of the state of New York. See 42 Pa. C.S.A. § 5327; see also *United Factors Corp. v. Mogul*, 16 A.2d 735 (Pa. Super. 1940) (court properly took judicial notice of the laws of the state of New York). Section 503 of the New York Vehicle and Traffic Law provides that a driver's license shall be valid from the date of issuance until the date of expiration determined by the New York State Department of Motor Vehicle's Commissioner. Importantly, New York law makes it a duty of every licensee to notify the issuing agency in writing of any change of residence within ten days of such change. N.Y. VAT Law, Section 505(5). Instantly, Faga concedes that her license carried, until two weeks prior to hearing, the 88 Kings Cross, Scarsdale, New York address. This concession, in and of itself, is sufficient to find residency. *Ball v. Barber*, 621 A.2d 156 (Pa. Super. 1993).

Since Omni made service at the address which Faga had provided to the New York Department of Transportation, service was properly effectuated. *Moses v. TMT Red Star Exp.*, 725 A.2d 792, 799 (Pa. Super. 1999). It is the responsibility of Faga to notify the New York Department of Transportation of any change in address. The fact that she did not fulfill this responsibility does not negate Omni's service of her at her listed address of record. *Id.*

It is of little import that Faga may have multiple residences in several jurisdictions. Indeed, experience teaches that modern travel technology has aided in the growth of ownership of multiple residences. Unfortunately, a residual effect of this mobility is the enhanced ability of the beguiler to play a "shell-game" by maintaining significant contacts at many locations while having primary residence at none. While I do not reach that conclusion currently, I am also mindful that the Pennsylvania Rules of Civil Procedure do not require service at one's "sole" residence. Rather, in the context of the Rules of Civil Procedure, the residence must only be an "actual" residence. *Robinson v. Robinson*, 67 A.2d 273 (Pa. 1949). Instantly, the Scarsdale address is an address at which Faga maintains personal



items; receives mail; lists as her address with the postmaster; listed at the time of service as her address with the New York Department of Transportation; listed as her registered address for the horses which are the subject of this litigation; and received monthly billing statements from the location where the horses were housed. Under these circumstances, service is sufficient.

For the foregoing reasons, the Defendant's Motion to Strike/Open Judgment is denied.

### ORDER

AND NOW, this 28th day of January, 2011, the Defendant's Motion to Strike/Open Judgment is denied. The stay previously entered in this matter is vacated. Plaintiff may proceed to execution on the judgment.



## ESTATE NOTICES

**NOTICE IS HEREBY GIVEN** that in the estates of the decedents set forth below the Register of Wills has granted letters, testamentary or of administration, to the persons named. All persons having claims or demands against said estates are requested to make known the same, and all persons indebted to said estates are requested to make payment without delay to the executors or administrators or their attorneys named below.

## FIRST PUBLICATION

## ESTATE OF LOIS R. BAIR, DEC'D

Late of Cumberland Township, Adams County, Pennsylvania

Co-Executrices: Audrey Neiderer a/k/a Audrey E. DeBruyne, 655 Highland Ave., Gettysburg, PA 17325; Christine J. Mummert, 320 Terrace Ave., Hanover, PA 17331

Attorney: Chester G. Schultz, Esq., 145 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF LUTHER A. FREED, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executors: Robert S. Freed, 1143 Turnberry Lane, York, PA 17403; James A. Freed, 6043 Old Hanover Rd., Spring Grove, PA 17362

## ESTATE OF CATHERINE LEEDY, DEC'D

Late of Franklin Township, Adams County, Pennsylvania

Executor: William S. Leedy, 1860 Bullfrog Road, Fairfield, PA 17320

Attorney: Bernard A. Yannetti, Jr., Esq., Hartman & Yannetti, 126 Baltimore St., Gettysburg, PA 17325

## ESTATE OF VERA ALICE LENTZ, DEC'D

Late of Reading Township, Adams County, Pennsylvania

Administrator: Michael L. Lentz, c/o Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

Attorney: Samuel A. Gates, Esq., Gates & Gates, P.C., 250 York Street, Hanover, PA 17331

## ESTATE OF THELMA L. ROWLAND, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executor: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart LLP, 40 York Street, Hanover, PA 17331

Attorney: James T. Yingst, Esq., Guthrie, Nonemaker, Yingst & Hart LLP, 40 York Street, Hanover, PA 17331

## SECOND PUBLICATION

## ESTATE OF BARBARA R. BALAKIR, DEC'D

Late of Conewago Township, Adams County, Pennsylvania

Laura J. Cruise, 61 Hemlock Drive, Hanover, PA 17331

## ESTATE OF THERESA M. GOUKER, DEC'D

Late of the Borough of McSherrystown, Adams County, Pennsylvania

Executrix: Karen Lee Keener, 104 Forest Hills Rd., Red Lion, PA 17356

Attorney: Ronald J. Hagarman, Esq., 110 Baltimore Street, Gettysburg, PA 17325

## ESTATE OF THELMA E. GRIFFIE, DEC'D

Late of Latimore Township, Adams County, Pennsylvania

Co-Executors: Harold L. Griffie and James D. Griffie, c/o Law Office of Wm. D. Schrack III, 124 West Harrisburg Street, Dillsburg, PA 17019-1268

Attorney: Law Office of Wm. D. Schrack III, 124 West Harrisburg Street, Dillsburg, PA 17019-1268

## ESTATE OF PATRICIA A. KARAS, DEC'D

Late of Huntington Township, Adams County, Pennsylvania

Diana L. Karas, 14 Lawrence Place, New Oxford, PA 17350

## ESTATE OF KATHLEEN I. MALINOSKY a/k/a KATHLEEN IRENE MALINOSKY, DEC'D

Late of Berwick Township, Adams County, Pennsylvania

Executor: William J. Malinosky, 248, Route 194 North, Abbottstown, PA 17301

Attorney: Amy E. W. Ehrhart, Esq., Mooney & Associates, 230 York Street, Hanover, PA 17331

## THIRD PUBLICATION

## ESTATE OF JOHN JAMIESON FROST, DEC'D

Late of Oxford Township, Adams County, Pennsylvania

Executrix: Judith Frost Witthohn, 1544 Marburg Road, Spring Grove, PA 17362

Attorney: Stonesifer and Kelley, P.C., 209 Broadway, Hanover, PA 17331

## ESTATE OF LOIS L. PATKA, DEC'D

Late of Hamilton Township, Adams County, Pennsylvania

Executor: Stephen Hartman, c/o Suzanne H. Griest, Esq., 129 East Market Street, York, PA 17401

Attorney: Suzanne H. Griest, Esq., 129 East Market Street, York, PA 17401

