ARIZONA SUPREME COURT
ORAL ARGUMENT CASE SUMMARY

ARTURO ROJAS CARDONA, *et al.* v. LAC VIEUX DESERT BAND OF LAKE SUPERIOR CHIPPEWA INDIANS HOLDINGS MEXICO, LLC, *et al.*
CV-10-0017-PR

PARTIES:

Petitioners: Arturo Rojas Cardona, et al.

Respondents: Lac Vieux Desert Band of Lake Superior Chippewa Indians Holdings Mexico, LLC, et al.

FACTS:

This litigation was brought by the Lac Vieux Desert Band of Lake Superior Chippewa Indians and a holding company created by the Tribe to participate in a proposed casino project in Mexico (collectively the "Tribe"). The defendants include several Mexican nationals who are Petitioners in this case.

Petitioners include brothers Arturo Rojas Cardona ("Arturo") and Juan Jose Rojas Cardona ("Juan"); Juegos de Entretenimiento y Videos de Guadalupe, S. De. R.I. de C.V. ("Juegos"); Entretenimiento de Mexico, S.A. de C.V. ("E-MEX"); and Guadalupe Recreational Holdings, LLC ("GRH"). Juegos and E-Mex are joint venture partners in the casino project. Arturo is E-Mex's legal representative, manager, and majority shareholder. Juan is E-Mex's agent and allegedly holds himself out as the owner of gaming facilities operated by E-Mex. GRH is a Nevada LLC.

In May 2006, Juegos and the Tribe agreed the Tribal Holding Company would acquire a 26% interest in Juegos for $6.5 million. The parties contemplated that the Tribe's investment would provide capital for a casino to be constructed by the Rojas brothers in Guadalupe, Mexico. The purchase was described in a Master Term Sheet and the parties ultimately signed a Security Agreement, a Depository Agreement, and a Pledge Agreement to secure the Tribal Holding Company's purchase. The Master Term Sheet states "[t]he Security and Depository Agreements shall be under the jurisdiction and laws of the State of Arizona, United States," but it also states that the parties will submit all disputes arising from their relationship to binding and final arbitration in Mexico. The Security Agreement says the "Mexican Counterparts," a term defined as consisting of the Petitioners other than Juan, consent to: (1) "the jurisdiction of the Courts of the State of Arizona" and agree "any action or claim arising out of, or any dispute in connection with, this Agreement . . . may be brought in the courts of Arizona;" and (2) service of process in any action being made upon them by certified mail or international courier at the Nuevo Leon, Mexico address listed in the Security Agreement (the "Mexican address").

After filing and dismissing a lawsuit in the U.S. District Court, the Tribe sued in Maricopa County Superior Court alleging that it had transferred $6.5 million, but the defendants had defaulted on their commitments and misappropriated the money. The second amended complaint asserts claims for breach of contract, conversion, breach of fiduciary duty, and other torts against the "Six Defendants," consisting of the Petitioners, except for GRH (the Nevada LLC), and Juegos de Entretenimiento y Videos de Monterrey S.A. de C.V. ("JDM").[1]

The Tribe moved *ex parte* for alternative service on "Six Defendants." In March 2009, Superior Court Judge Kreamer approved alternative service by these methods: 1) serving the Petitioners' attorneys of record via certified mail; 2) serving Juan via his two known e-mail addresses; and 3) serving the Six Defendants via Federal Express at the Mexican address, return receipt requested. The court deemed service on Arturo to have been completed as of March 10, 2009, because he had been served by mail at his last known addresses in the United States. In May 2009, the Tribe's counsel filed an Affidavit of Service attesting she had completed alternative service consistent with the court's order.

The Six Defendants made a limited appearance and moved to dismiss for insufficiency of process. Some of them, along with other defendants, also filed motions to dismiss for lack of personal jurisdiction and lack of subject matter jurisdiction. With regard to service, the Six Defendants argued the superior court had violated both Ariz. R. Civ. P. 4.2(i)(1) and the Hague Convention by permitting alternative service. The Six Defendants noted that under the Convention, service had to first be attempted through Mexico's Central Authority. *See e.g., Saysavanh v. Saysavanh*, 145 P.3d 1166 (Utah App. 2006). Service was ineffective, they argued, because the Tribe had not followed the procedures outlined by the Convention.

In late 2009 the court denied motions to dismiss for 1) insufficiency of service, (2) lack of personal jurisdiction as to Juan, and (3) lack of subject matter jurisdiction. Petitioners filed a special action challenging those rulings. The court of appeals declined jurisdiction in December 2009.

Petitioners filed a petition for review raising three issues that corresponded to the three motions denied by the trial court. The Court granted review to consider whether the superior court erred in allowing alternative service of process contrary to the Hague Convention on Service Abroad. It appears that Mexico acceded to the Convention on the condition that parties attempt service through its Central Authority before pursuing alternative service, a point recognized in a subsequent State Department announcement and in academic commentary. See http://travel.state.gov/law/info/judicial/judicial_677.html, U.S. Dep't of State, Circular: *International Judicial Assistance Mexico, Oct. 2009* (Mexico's accession to the Hague Service Convention indicates service through the Mexico Central Authority is the exclusive method available.); Charles Cambell, *No*

[1] The Petitioners, the Mexican Counterparts, and the Six Defendants are not identical. Under the Security Agreement, the Mexican Counterparts include the Petitioners except for Juan Jose Rojas Cardona. The E-Mex and JDG joint venture (the "Asociacion en Participacion") is also a Mexican Counterpart. The second amended complaint states that JDM is named as a defendant because some of the funds transferred by the Tribe were used to secure a contract through JDM. Although JDM is one of the Six Defendants, it is not one of the identified Petitioners.

Sirve: The Invalidity of Service of Process Abroad by Mail or Private Process Server on Parties under the Hague Convention, 19 Minn. J. Int'l L. 107 (Winter 2010).

The Court's ultimate decision on service will not affect the superior court's jurisdiction with regard to Petitioners Arturo Rojas Cardona, who was served by mail at his last known U.S. addresses, and GRH, the Nevada LLC.

The parties have been asked to address 7 Foreign Affairs Manual § 953.5 (2007), and U.S. Dep't of State, Circular: International Judicial Assistance Mexico, Oct. 2009, http://travel.state.gov/law/info/judicial/judicial_677.html in their supplemental briefs.

ISSUE: Can service of process on a foreign national that did not comply with the Hague Convention on Service Abroad suffice under state law despite the holding in *Kadota v. Hosogai*, 125 Ariz. 131, 608 P.2d 68 (App. 1980), that it cannot?

or other pleading filed in this case.