

**Cadle Co. v Tri-Angle Associates**

2003 NY Slip Op 30007(U)

January 7, 2003

Supreme Court, New York County

Docket Number: \_300109/9572

Judge: Sherry Klein Heitler

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SUPREME COURT OF THE STATE OF NEW YORK — NEW YORK COUNTY

PRESENT: HON. SHERRY KLEIN HEITLER  
Justice

PART 30

THE CADLE COMPANY

Plaintiff,

- v -

TRI-ANGLE ASSOCIATES, THOMAS  
DELMONICO, DONALD D. RODE, JR.,  
CHRISTOPHER R. RODE,

Defendants

INDEX NO. 109957102

MOTION DATE \_\_\_\_\_

MOTION SEQ. NO. 001

MOTION CAL. NO. \_\_\_\_\_

The following papers, numbered 1 to \_\_\_\_\_ were read on this motion to/for \_\_\_\_\_

PAPERS NUMBERED

Notice of Motion/ Order to Show Cause — Affidavits — Exhibits \_\_\_\_\_

Answering Affidavits — Exhibits \_\_\_\_\_

Replying Affidavits \_\_\_\_\_

3  
SCANNED  
2002

Cross-Motion:  Yes  No


Upon the foregoing papers, it is hereby:

**ORDERED** that the issue service is referred to a Special Referee to hear and report, with recommendations; and it is further

**ORDERED** that ~~this~~ motion is held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403; and it is further

**ORDERED** that a copy of ~~this~~ order with notice of entry shall be served on the Judicial Support Office, 60 Centre Street, Room 311, New York, New York, 10007 no later than Monday, January 27, to arrange a date for the reference to a Special Referee.

Dated: 1-7-03

  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

**SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK: IAS PART 30**

..... X

THE CADLE COMPANY,

Plaintiff,

-against-

TRI-ANGLE ASSOCIATES, THOMAS DELMONICO,  
DONALD D. RODE, **JR.** and CHRISTOPHER R. RODE,

Defendants.

Index No. 109957/02

**DECISION & ORDER**

-----X  
**SHERRY KLEIN HEITLER, J.:**

Plaintiff moves for *summary* judgment in lieu of a complaint based upon a judgment issued in favor of plaintiff and against the defendants in the Superior Court, Judicial District of Waterbury, State of Connecticut on or about August 1, 1994. The defendant, Donald D. Rode, Jr., opposes this application and cross-moves for an order dismissing the action.

The defendant argues that he was never served in the Connecticut action and, **as** such, the Connecticut court never had personal jurisdiction. In fact, he contends he **only** became aware of the Connecticut action, which was commenced in 1993, this year. He argues further that he was never served With the appraisal obtained or the judgment entered. The defendant claims that he was no longer living at the address petitioner served at the time service was effectuated and has not lived in Connecticut for ten years. He contends that at the time of the commencement of this action, he was a resident of the State of New **York** and, to his knowledge, his address and phone number were listed and available through the white pages or by calling directory assistance.

The plaintiff claims that service was proper **as** to the Secretary of State of the State of Connecticut and that all that plaintiff was required to do was to serve the papers at defendant's last known address, which it did. The plaintiff states that a copy of the envelope shows that the mail was returned **as** "unclaimed" and that defendant simply did not pick it up at the Post Office. Plaintiff contends that the envelope in question is not marked with a note that the addressee **was** unknown or did not live there. Accordingly, the plaintiff argues that the service requirement was satisfied.

In order to consider enforcing the Connecticut Judgement, this court must first determine whether or not personal jurisdiction was obtained in the Connecticut action. The Affidavit of Service by Joseph Butler, Deputy Sheriff, dated November **13, 1993**, states:

...And afterwards, I made a due and diligent search to locate the within named Defendant: DONALD D. RODE, JR., but was unable to do so. Therefore, I made an affidavit of diligent search and served one copy upon the State Of Connecticut, Secretary of State's Office.

And afterwards on NOVEMBER **16,1993** In HARTFORD, I made due and legal service upon the within named Defendant: DONALD D. RODE, JR., by leaving at the OFFICE OF THE SECRETARY OF STATE, at **30** Trinity Street, Hartford, Connecticut, a true and attested copy of the within Writ, Summons, Complaint, Statement of Amount In Demand & Exhibits; and a true and attested copy of the within Lis Pendens, with my endorsement thereon; and paid the statutory fees.

and

And afterwards on NOVEMBER **16,1993** In HARTFORD, I made due and legal service upon the within named Defendant: DONALD D. RODE, JR., by depositing in the post office an envelope containing a true and attested copy of the within Writ, **Summons**, Complaint, Statement of Amount In Demand & Exhibits; and a true and attested copy of the within Lis Pendens, with my endorsement thereon; addressed to said Defendant at his last known address **as** such: DONALD D. RODE, JR.; **54** RALSEY ROAD **SOUTH**; STAMFORD, CT. **06902**; Certified Mail, Return Receipt Requested And Postage Prepaid. (See, Defendant's Exhibit 1.)

Petitioner claims to have satisfied the requirements of Connecticut General Statutes §52 - 59b(c), which provides that when service is made on non-resident individuals, process may be served on the Secretary of State and sent to defendant's last known address. This second prong of the Statute has been interpreted by the Supreme Court of Connecticut **as** follows:

“The requirement that the copy be mailed to the defendant at his ‘last-known address’ does not mean the last address **known** to the plaintiff but does mean that is, by those who under ‘the ordinary circumstances of life would know it.’”

(See, D’Occhio v. Conn. Real Estate Commission, 189 Conn. 162, 171 [1983], citing Hartley v. Vitiello, 113 Conn. 74, 80, 154 A. **255** [1931].)

It is undisputed that said correspondence was returned unclaimed. The envelope attached to the motion papers has defendant's current New York address written in the corner with the letters “FWD” underlined and crossed out. Further, the word “MOVED is written on the envelope and is also crossed out. Whether or not further efforts should have been taken to ascertain defendant's actual residence is an issue of fact.

Accordingly, the court is holding this motion in abeyance pending a traverse hearing.

The court is referring the issue of service to a Special Referee to hear and report. Therefore, it is hereby

**ORDERED** that the issue of service is referred to a Special Referee to hear and report, with recommendations; and it is further

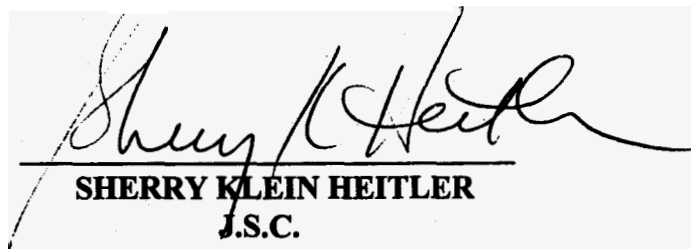
**ORDERED** that this motion is held in abeyance pending receipt of the report and recommendations of the Special Referee and a motion pursuant to CPLR 4403; and it is further

**ORDERED** that a copy of this order with notice of entry shall be served on the Judicial Support Office, 60 Centre Street, Room 311, New York, New York, 10007 **NO LATER THAN MONDAY, JANUARY 27, 2003** to arrange a date for the reference to a Special Referee.

A copy of this order is being mailed to all counsel on this date.

This shall constitute the decision and order of the court.

DATED: JANUARY 7, 2003



**SHERRY KLEIN HEITLER**  
**J.S.C.**