

**Lowenfeld v Fakty**

2008 NY Slip Op 32074(U)

July 17, 2008

Supreme Court, New York County

Docket Number: 0601096/2006

Judge: Milton A. Tingling

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

PRESENT: HON. MILTON A. TRINGLING  
*MILTON A. TRINGLING*  
J.S.C.  
Justice

PART 44

JULIAN LOWENFELD  
- v -  
ARGUMENTY PARTY

INDEX NO. 601096/06  
MOTION DATE 6/25/08  
MOTION SEQ. NO. 6  
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 ...	<u>1</u>
Answering Affidavits — Exhibits _____	<u>2</u>
Replying Affidavits _____	<u>3</u>

Cross-Motion:  Yes  No

Upon the foregoing papers, it is ordered that this motion is decided in accordance with the  
annexed Decision.

**FILED**

JUL 23 2008

COUNTY CLERK'S OFFICE  
NEW YORK

Dated: 7/17/08 \_\_\_\_\_ mat  
J.S.C.

Check one:  FINAL DISPOSITION  NON-FINAL DISPOSITION

Check if appropriate:  DO NOT POST  REFERENCE

MOTION/CASE IS RESPECTFULLY REFERRED TO JUSTICE  
FOR THE FOLLOWING REASON(S):

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

-----X  
JULIAN H. LOWENFELD,

Plaintiff,

**DECISION AND ORDER**

-against-

ARGUMENTY I FAKTY,  
KOMSOMOLSKAYA PRAVDA,  
MEDIA EXPRESS LTD.,  
EFFECT PUBLISHING, INC.,  
LORAFKO, INC.

Index No. 601096/06

Defendants.

-----X

**FILED**  
JUL 23 2008  
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NEW YORK

Plaintiff moves by Order to Show Cause for:

(a) an extension of time to effectuate service upon Defendant Komsomol'skaya Pravda ("Pravda"), so as to permit service although the Complaint in this action was filed more than 120 days ago; and

(b) permission to serve Pravda by the following methods: i) by international express mail to Pravda's Moscow Address: Komsomolskaya Pravda, 24 Pravda Street, Moscow, Russia 125993; ii) by overnight mail to the counsel that has appeared on behalf of Pravda and represented in this action: Law Offices of Ariel Aminov PLLC, 107-06 71st Road, Suite 2, Forest Hills, NY 11375; and iii) by electronic service in PDF format by e-mail to Pravda's e-mail address: [kp@kp.ru](mailto:kp@kp.ru) which is identified on Pravda's website [www.kp.ru](http://www.kp.ru) and to the e-mail address of Pravda's editor in chief, Vladimir Sungorkin: [sungor@kp.ru](mailto:sungor@kp.ru).

On October 1, 1999, Plaintiff was awarded a Judgment by the United States District Court of the Southern District of New York for fees and expenses in the total amount of \$434,840.67, to be paid by the Defendants. Plaintiff claims that the Judgment was subsequently

entered and docketed as a judgment of this court on November 22, 1999, pursuant to CPLR §5018. Plaintiff alleges that the Judgment remains largely unsatisfied, except for \$100,000.000 paid jointly and severally by Defendants Argumenty I Fakty, Media Express Ltd. and Effect Publishing, LLC, in settlement of all claims against them, which settlement was entered into on or about April 23, 2006. According to the Plaintiff, factoring in compounded statutory interest at 9% per annum since November 22, 1999, and taking into account that \$100,000.00 has already been paid, the amount of the Judgment as of March 31, 2008 that Plaintiff claims is owed by Defendant Pravda is approximately \$748,502.90.

On April 7, 2006, Justice Smith of the New York County Supreme Court issued an Order to Show Cause which instructed Plaintiff to personally serve Pravda's New York representative by April 10, 2006. Pravda's bureau chief, Mr. Umerenkov, was not served until April 12, 2006. After a traverse hearing, the court issued a Decision and Order dated February 14, 2007 finding that the Plaintiff failed to comply with the portion of the Order to Show Cause that required Plaintiff to serve Defendant's New York representative by personal service by April 10, 2006, and that Mr. Umerenkov was not authorized to accept service on behalf of Pravda, pursuant to CPLR §311. Accordingly, the Court dismissed the lawsuit against Defendant Pravda outright.

Plaintiff alleges that at the time the February 14, 2007 Order was issued, his legal counsel initiated a motion for reargument of the Order, however Plaintiff claims he only recently learned that the motion for argument was denied, and that the appeal was negligently not perfected within nine months from the date of the Notice of Appeal. Therefore, since Plaintiff has retained new counsel in the matter, he moves that this Court grant an extension of time to serve Defendant Pravda because more than 120 days have elapsed since the filing of the Complaint, and service on Pravda has not yet been effectuated. Plaintiff states that extending his time to

[\* 4 ]

serve the complaint will save time and judicial resources, avoiding the inconvenience of filing a new separate action against Pravda and then making a motion to consolidate that action with this matter.

Because the Plaintiff already has a judgment against Pravda from the District Court of the Southern District of New York, and courts have found that an extension of time is sometimes warranted in the interest of justice, so long as there is no prejudice to the Defendant, Plaintiff's motion for an extension of time to serve Defendants is granted. See, e.g. *Leader v. Maroney, Ponzini & Spencer*, 97 N.Y.2d 95, 105-106 (1st Dept., 2001).

Plaintiff also seeks the Court's leave for alternative service upon Pravda, pursuant to CPLR 308 (5), as Plaintiff alleges that it is a "severe hardship – if not impossibility" to serve Russian entities through the Hague convention. Because Judge Smith deemed the American representatives of Pravda unable to accept service on behalf of Pravda pursuant to CPLR §311, Plaintiff alleges that his only option is to serve Pravda in Russia, through the Hague Convention rules. According to the Plaintiff, "The Russian Federation has implemented a raft of legislation to make service of its citizens and entities by foreigners virtually impossible."

Plaintiff cites *RSM Production Corp v. Friedman*, in which Judge Cote stated:

While the Russian Federation and the United States are both parties to the Hague Service Convention, plaintiffs have offered evidence showing that the Russian Federation's designated Central Authority "is no longer processing service requests from the United States until the United States resumes service of Russian letters rogatory on a reciprocal free basis in accordance with the [sic] Russian-American long-term judicial practices." Court-directed service pursuant to Rule 4(f)(3) is warranted because plaintiffs have demonstrated that they are currently unable to serve defendants Friedman and Korchagin in the Russian Federation pursuant to Hague Service Convention procedures.

06 Civ. 11512 (DLC) (S.D.N.Y) (May 24, 2007)

[\* 5 ]

Plaintiff also cites *Hollow v. Hollow*, 293 Misc.2d 691, (Sup. Ct. Oswego Cty., 2002) where the court found that service on a defendant in Saudi Arabia via e-mail alone was justified. However, in both *Hollow* and *RSM Production*, the plaintiffs demonstrated that they had actually made attempts to serve the defendants via traditional methods, and therefore were left with alternative service as a last resort. In the instant matter, Plaintiff has not attempted to serve the Defendants in Russia, rather has only made unsubstantiated assertions of impracticability, without making a showing of impracticability. Therefore, Plaintiff's motion for permission to serve Pravda by alternative methods is hereby denied.

Accordingly, Plaintiff's motion for an extension of time to effectuate service upon Defendant Pravda is granted. Plaintiff's motion for permission to serve Pravda through alternative methods is denied, without prejudice to renew, if necessary, after attempted service.

Dated: July 17, 2008

  
\_\_\_\_\_  
J.S.C.  
HON. MELTON A. TINGLINS  
J.S.C.

**FILED**  
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