

## Client Alert

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## Use of Social Media and Internet Message Boards to Effect Substituted Service

In a recent Singapore High Court action,<sup>1</sup> the plaintiff, David Storey, successfully effected substituted service of the writ on one of three defendants, through a combination of electronic means, namely, email, Skype, Facebook and an internet message board.

While substituted service by electronic mail is expressly provided for in the Singapore Rules of Court<sup>2</sup> and the Supreme Court Practice Directions,<sup>3</sup> there were no prior reported Singapore judgments on substituted service through social media and internet message boards.

### Facts

The plaintiff brought a suit against three defendants for, amongst other things, copyright infringement, breach of contract and conspiracy. The second defendant, David Michael Dobson, is the managing director of the first defendant company, Planet Arkadia Pte Ltd.

The plaintiff had obtained leave to serve the writ outside jurisdiction and attempted personal service on multiple occasions at the known addresses of the second defendant in Australia. However, the plaintiff was unable to effect personal service on the second defendant and subsequently applied for substituted service through social media accounts and an internet message board.

In the application for substituted service, the plaintiff adduced evidence that the second defendant:

- (i) operated two email accounts;
- (ii) owned and recently used a Skype account and had used this to hold a previous conversation with the first defendant company;
- (iii) owned and recently used a Facebook account which belonged to one "David Dobson"; and
- (iv) owned and used an internet message board administrator account "David | Arkadia" on the domain arkadiaforum.com, a forum for the virtual inhabitants of the first defendant's gaming platform.

Evidence was also adduced to show that the Facebook and arkadiaforum.com accounts' profile pictures were identical, and that the Skype account's profile picture was a different picture of the same person. The plaintiff adduced further evidence that these platforms were recently used where a video was shared and photos were added through the Facebook account, while the

<sup>1</sup> *Storey, David Ian Andrew v Planet Arkadia Pte Ltd and others* [2016] SGHCR 7, Summons No. 1030 of 2016, decision by the Honourable Assistant Registrar Zhuan WenXiong AR dated 24 March 2016

<sup>2</sup> Singapore Rules of Court, Order 62 rule 5(4)

<sup>3</sup> Supreme Court Practice Directions, paragraph 33(6)

Skype and arkadiaforum.com accounts showed that the second defendant was very recently online.

## Decision

The Court held that substituted service is permissible through social media and the internet message board, where these electronic platforms are owned and in recent use by the defendant. Further, the plaintiff had successfully shown that personal service was not practicable.

The Court allowed service through social media and the internet message board for the following key reasons:

- (i) The language of Order 62 rule 5 of the Singapore Rules of Court is wide enough to encompass service through Skype, Facebook and internet message boards, which constitute "electronic means" as the Court may specify;
- (ii) The plaintiff successfully showed the impracticability of personal service, which is a prerequisite for substituted service;
- (iii) The proposed methods of service would in all reasonable probability, if not certainty, be effective to bring knowledge of the writ to the second defendant; and
- (iv) Foreign case law in Australia and Canada has allowed substituted service through electronic means other than email.

The Court also accounted for counterarguments against allowing substituted service through electronic means apart from email, whereby such means may not be effective in bringing notice to the defendant. In doing so, the Court held that this fear should not be overblown and recognised that the only completely certain way of bringing notice is actual physical service.

Further, the Court held that such risks may be managed with the following requirements:

- (i) Ordering electronic service to be accompanied by either posting on the front door or AR registered post. Such service should only be dispensed with if the address of the person to be served is attested to be unknown or if there is proof that the person no longer owns or is resident at a known address;
- (ii) Proof that the electronic platform in question is owned by the person to be served; and
- (iii) Proof that the electronic platform in question was recently used by the person to be served.

Finally, the Court cautioned that substituted service cannot circumvent the general rule that the plaintiff must first obtain leave to serve the writ outside jurisdiction and show that such personal service is impracticable. Otherwise, such substituted service may be challenged on the basis that it contravenes the law of the foreign jurisdiction, or that the substituted service was not effected in accordance with the order granting leave for substituted service.

## Comments

This decision provides new clarity on the scope of the Rules of Court and Supreme Court Practice Directions for substituted service through electronic means.

In addition, the Singapore Court has demonstrated a very practical approach in identifying the ownership and use of social media accounts and internet message boards. This includes the Court's consideration of evidence where a social media user is explicitly self-identified through a profile name and profile

picture (or other posted pictures) and online activity such as the sharing of photos, publicly-accessible messages and the sending of private messages.

Crucially, the Court noted that posting on front doors would not be effective where an owner is not habitually resident or has moved out, amongst other possibilities. Similarly, advertisements in newspapers would likely be ineffective where the person served is not a habitual reader and may also not read the notice section of that newspaper. This decision therefore serves as a useful and timely reminder that substituted service by social media and other electronic means may be more effective and appropriate in this electronic age.